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REFERENCE BOOK

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5. ENGINEERING & MAINTENANCE

A. Request for authorization to award Construction Contract No. 2690, "Pier 45 Shed C Development Phase I" to Pioneer Contractors, Inc. (Resolution No. 04-02)

6. REAL ESTATE

A. Request for approval of rent adjustment with San Francisco Parking, Inc. regarding previous tenancy at SWL 322-I (90 Broadway). (Resolution No. 04-08)

7. PLANNING AND DEVELOPMENT

A. Request for authorization of amendment to Exclusive Rights to Negotiate Agreement ("ERN") with SF Piers 27-31, LLC (aka The Mills Corporation or "Developer") for the Pier 27-31 Mixed Use Recreation Project. (Resolution No. 04-07)

8. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

9. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss existing and anticipated litigation matters pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (2 cases):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016. (Discussion Item)

- As Plaintiff: The Port has a claim against National Metal Fabricators and other parties resulting from the March 2002 fire at the Haslett Warehouse. Consideration and approval of proposed settlement of the Port's claim for $11,290.73 in exchange for a release of National Metal

Fabricators and other parties involved in renovation of the Warehouse. A copy of the proposed settlement agreement is available for inspection with the Executive Secretary for the Port, pursuant to San Francisco Administrative Code Section 67.12(b)(3).

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 92
Person Negotiating: Port: Peter Dailey, Maritime Director
*Hanson Aggregates: Bill Butler

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 92.

b. Property: Piers 3, 31-½ and 33
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Hornblower Yachts: Terry MacRae

Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Piers 3, 31-½ and 33.

c. Property: SWL 322 (Northwest corner of Embarcadero & Broadway)
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Allright Parking: Matt Gnesheimer

Under Negotiation: ___ Price ___ Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 322.

10. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

11. ADJOURNMENT

JANUARY 2004
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
January 13	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
January 27	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 3:00 p.m., unless otherwise noticed. ***The Commission Agenda and staff reports are posted on the Port's Website @ www.sfport.com.*** Contact Amy Quesada at 274-0406.

The Brannan Street Wharf Citizens Advisory Committee meets on an as-needed basis to develop a concept plan for this planned open space in the South Beach area. Meetings are held in the Bayside Conference Room at Pier 1. Contact Dan Hodapp @ 274-0625 or dan_hodapp@sfport.com

The Cruise Terminal Environmental Advisory Committee will meet the week of January 19th; date and time to be determined. (Regular schedule to be determined). Contact Michael Nerney at 274-0416.

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545. The next meeting is scheduled on January 20th at 9 a.m.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674. The next meeting is scheduled on January 21st at 5 p.m.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Ferry Building: The Port Commission Hearing Room is located on the second floor of the Ferry Building. The main public entrance is from the west (Embarcadero) side and is served by a bank of elevators adjacent to the historic staircase. Accessible public restrooms are on the first floor at the northeast end of the building as well as on the second floor across the lobby from the Port Commission Hearing Room. The main path of travel to the Port Commission Hearing Room is equipped with remote infrared signage (Talking Signs). The Port Commission Hearing Room is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) is available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market & Spear Streets. Accessible MUNI lines serving the Ferry Building area are the F-Line, 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

A) 3 spaces in the surface lot on the west side of the Embarcadero at Washington St.
B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking. Metered street parking is available on the Embarcadero, Washington St., Folsom St. and Drumm St.

Pier 1:
The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Bayside conference rooms. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Bayside Conference rooms.

Accessible meeting information policy:
In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals. A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact John Scott, Port's ADA Coordinator, at 274-0571. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Donna Hall by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at Donna.Hall@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance by contacting Ms. Hall or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at http://www.sfgov.org/sunshine.htm

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

PORT OF SAN FRANCISCO

MEMORANDUM

January 7, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Request for Approval of First Amendment to Lease No. L-13313 for a Portion of Pier 45 Shed A to San Francisco Museum and Historical Society and Its Sublessee, Musee Mecanique, for Additional Term.

DIRECTOR'S RECOMMENDATION: Authorize the Executive Director to Negotiate and Execute a Lease Amendment with Said Tenant in a Form Consistent with Terms Outlined in this Staff Report.

BACKGROUND

On June 3, 2002, the San Francisco Board of Supervisors adopted a Resolution "urging the Port of San Francisco to sign an agreement with The San Francisco Museum and Historical Society for the interim use of a portion of Shed A at Pier 45 until a long term tenant is prepared to occupy the space." This resolution also included a recommendation for the temporary placement of the Musee Mecanique within the San Francisco Museum space. In addition, at its Special Meeting on June 13, 2002, the Fisherman's Wharf Waterfront Advisory Group unanimously approved a motion supporting use by the San Francisco Museum and Historical Society and the Musee Mecanique of a portion of Pier 45 Shed A. The exhibits and attractions of the Museum and Musee Mecanique attract approximately 150,000 visitors per year.

Both museums are in need of temporary exhibit space while they go through the process of securing permanent facilities. This process was expected to take approximately 2½ to 3 years. The Museum is currently negotiating with the City and County of San Francisco ("The City") to restore the Old Mint at 5th and Mission Streets for use as its permanent home. The Musee Mecanique, one of the world's largest privately owned collections of antique mechanical machines and musical instruments, is temporarily displaced from its home at the Cliff House due to a 2 to 3 year renovation project.

This Print Covers Calendar Item No. 4A

EXISTING LEASE

On July 9, 2003, the San Francisco Port Commission authorized staff to negotiate a 30-month lease for the Museum and its sublessee Musee Mecanique, for a portion of Pier 45 Shed A, for temporary use (Resolution No. 02-31).

The subsequent lease, No. L-13313, officially commenced January 23, 2003 and terminates on July 31, 2005. The lease requires the Museum to relinquish a portion of the premises to accommodate the proposed expansion, should it occur, of an adjacent tenant, the San Francisco Maritime Park Association.

REQUEST FOR ADDITIONAL TERM

As discussed above, the Museum is currently negotiating with The City to restore the Old Mint at 5th and Mission Streets for use as its permanent home. The Museum and City have entered into an exclusive negotiations agreement which expires in June 2004, at which time a Lease Disposition and Development Agreement is expected to be executed and construction to commence. Occupancy and lease execution for the Museum in the Old Mint building is anticipated in Spring/Summer 2006. As such, the Museum is requesting a 12-month extension for Lease No. L-13313 to accommodate the development schedule for the Old Mint.

RECOMMENDATION

Port staff recommends that the Port Commission authorize the Executive Director to negotiate and execute a lease amendment with the Museum in a form consistent with the terms and conditions outlined in this staff report.

Prepared by: Phil Williamson, Senior Property Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-03

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, On June 24, 1997 (by Resolution No. 97-50), the Port Commission adopted the Waterfront Land Use Plan, in which museums are listed as an acceptable long-term and interim use for Pier 45 Shed A; and

WHEREAS, On June 3, 2002, the San Francisco Board of Supervisors approved a resolution urging the Port of San Francisco to sign an agreement with The San Francisco Museum and Historical Society ("Museum") for the interim use of a portion of Shed A at Pier 45 until a long term tenant is prepared to occupy the space; and

WHEREAS, The Museum preserves and disseminates historical data, information and materials about the history of the City of San Francisco and its surrounding area and historically has welcomed tens of thousands of visitors from around the world; and

WHEREAS, on July 9, 2002, the Port Commission approved Resolution No. 02-31, authorizing the Executive Director to negotiate and execute a 30-month lease with the Museum; and

WHEREAS, Lease No. L-13313 between the Museum and the Port commenced on January 23, 2003 and will terminate on July 31, 2005; and

WHEREAS, the Museum's permanent home at the Old Mint is now being developed with occupancy anticipated in Spring/Summer 2006; and

WHEREAS, the Museum has requested a lease amendment extending the term of Lease No. L-13313 by twelve months; and NOW, THEREFORE, BE IT

RESOLVED, That the Port Commission hereby approves the proposed amendment to Lease No. L-13313, on the terms and conditions set forth in the staff report attached to this resolution and authorizes the Executive Director, or his designee, to negotiate and execute a final lease amendment with the Museum in a form consistent with this resolution and as approved by the Office of the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 13, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

January 7, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval for Temporary Closure of Business During Construction of Tenant Improvements for a Maximum of Six (6) Months for Lease No. L-7493, Castagnola's Restaurant.

DIRECTOR'S RECOMMENDATION: Consent to Temporary Closure of Business During Construction of Tenant Improvements.

BACKGROUND

On May 1, 1970, Castagnola's Restaurant entered into a 66-year lease with the Port of San Francisco. The lease expires in 2036. The restaurant is owned by General Lolli with day-to-day operations the responsibility of two family members. Although a professional restaurant manager was recently hired to improve sales, no significant tenant improvements have been made to the Premises in many years and the restaurant has experienced declining sales over the past decade.

PROPOSED TENANT IMPROVEMENTS

Castagnola's now proposes to undertake a $1 - $1.5 Million renovation project to modernize the kitchen, renovate and redesign the bar and dining areas, and upgrade the exterior to enhance the restaurant's appeal from Jefferson Street.

Castagnola's projects the proposed improvements will generate significant additional sales. Currently, the restaurant generates annual gross sales of $2.5 Million. For the first year following completion of the improvements, Castagnola's projects gross sales of $5 Million. Projected gross sales figures for subsequent years continue to increase and are anticipated to reach $8.2 Million in year 5. While optimistically aggressive, a comparably improved Fisherman's Wharf restaurant generates $4.75 Million in annual gross sales.

This Print Covers Calendar Item No. 4B

Total annual rent to the Port for the year ending October 2003 was approximately $200,000. Should Castagnola's achieve their projected first year goal of $5 Million in gross sales, total annual rent would increase 63% to $325,000.

TEMPORARY CLOSURE OF RESTAURANT

During construction of the proposed improvements, Castagnola's requests the Port's consent to temporarily close the restaurant for up to 6 months. Such consent is required because Section 6 of the Lease requires the tenant to continually operate a restaurant on the Premises. During the requested closure period, minimum rent of $15,427.39 per month shall continue to be paid

RECOMMENDATION

Port staff recommends that the Port Commission find that a closure of the premises for a period of six-months for construction of the above-described tenant improvements will not violate Section 6 of the Lease and will not cause a termination of the Lease. The six-month period shall commence upon issuance of a Port Building Permit for the above-stated tenant improvements and shall terminate the earlier of 180 days from the date of issuance of the Port Building Permit or completion of the improvements as evidenced by the issuance of a Certificate of Occupancy from the Port's Chief Building Inspector or his designee (the "Closure Period").

Prepared by: Phil Williamson, Senior Property Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-04

WHEREAS, Charter Section B3.581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port jurisdiction; and

WHEREAS, On May 1, 1970, the Port Commission approved Lease No. L-7493 with Castagnola's Restaurant for a 66-year term; and

WHEREAS, Section 6 of Lease No. L-7493 requires the Premises be continually used to conduct a restaurant and other uses reasonably related and auxiliary thereto; and

WHEREAS, the Tenant now desires to construct various tenant improvements which will require the temporary closure of the Premises for a period of up to 6 months; and

WHEREAS, the proposed tenant improvements are projected to significantly increase the gross sales revenues generated at the Premises and aesthetically enhance a portion of the Fisherman's Wharf waterfront; and

WHEREAS, the Tenant requests the Port to consent to a closure of the Premises for a period not to exceed six-months with said period to commence upon issuance of a Port Building Permit and to terminate the earlier of 180 days from the date of issuance of the Port Building Permit or completion of the improvements as evidenced by the issuance of a Certificate of Occupancy from the Port's Chief Building Inspector or his designee; therefore, be it

RESOLVED, that the Port Commission hereby consents to a closure of the Premises for a period not to exceed six-months with said period commencing upon issuance of a Port Building Permit for the tenant improvements described in the staff report attached to this resolution and terminating the earlier of 180 days from the date of issuance of the Port Building Permit or completion of the improvements as evidenced by the issuance of a Certificate of Occupancy from the Port's Chief Building Inspector or his designee (the "Closure Period"); and, be it further

RESOLVED, that the Port Commission hereby finds that such six-month closure shall not be grounds for a termination of the Lease under Section 6 thereof and hereby directs the Executive Director and Port staff to refrain from enforcement action under Section 6 of the Lease by reason of such six-month closure for tenant improvements.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 13, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

January 7, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Request to Enter Into an Amendment to October 30, 2002 Agreement with The Franciscan Restaurant for the Repair of the Pier Surface and Substructure at Pier 43 ½ (Lease No. L-7593).

DIRECTOR'S RECOMMENDATION: AUTHORIZE ENTERING INTO SECOND AMENDMENT OF THE OCTOBER 30, 2002 AGREEMENT WITH THE FRANCISCAN RESTAURANT FOR THE REPAIR OF THE PIER SURFACE AND SUBSTRUCTURE AT PIER 43 ½.

BACKGROUND:

The Franciscan leases 72,254 square feet of Pier 43 ½ for a parking lot serving the patrons of the Franciscan Restaurant as well as those of other Fisherman's Wharf tenants. The Lease commenced in 1971 and has an original term of 66 years. The Lease requires the tenant to maintain the pier substructure, though in the event rebuilding the substructure and decking of the pier becomes necessary during the term of the Lease, the Port will credit against percentage rental 65% of the cost of such rebuilding. In addition, the Lease also provides that if Franciscan determines that it would be uneconomical to proceed with the substructure repair, Franciscan has the right to terminate the Lease with no further rights or obligations to the Port.

In late 2002, the Port Commission authorized the Port Director to enter into an Agreement with The Franciscan concerning the allocation of costs and responsibilities for undertaking specific repairs to the Parking Lot. In this Agreement, The Franciscan agreed to waive its right to surrender the Lease without further responsibility for repair if the Port agreed to authorize an increase in rent credits to essentially 100% of the cost. The Agreement has a budget maximum of $1.3 million, plus financing costs not to exceed 7%. The Agreement also includes a settlement and release of any claims related thereto, and establishes understandings as to the

This Print Covers Calendar Item No. 4C

respective obligations of the parties in obtaining the necessary regulatory approvals for the repairs and with respect to participation in the joint BCDC/Port public planning process to identify, adopt, and implement amendments to the BCDC/Port San Francisco Special Area Plan for the Fisherman's Wharf area. The effectiveness of the Agreement was subject to The Franciscan obtaining all necessary regulatory approvals, and to both the Port and The Franciscan agreeing, each in its sole discretion, to any condition attendant to those regulatory approvals. Both parties executed that Agreement, dated October 30, 2002.

On December 11, 2002, the Port Commission approved an Amendment to the Agreement modifying the terms of the Agreement so as to be consistent with the terms of the relevant BCDC permit.

The Port Director now seeks authorization to enter into an amendment of that Agreement with regard to the scope of work performed and to be completed.

PROPOSAL AND ANALYSIS:

Franciscan proposes to alter the scope of work as originally proposed and has agreed to undertake a condition survey of the lot every three years. It has been agreed that Franciscan will provide the Port with a condition survey report each January 14th, beginning in 2007, so that both the Franciscan and the Port have a clear understanding of the condition of the substructure on an ongoing basis.

Franciscan proposes to alter the work as originally proposed. As shown on Attachment A, Franciscan will complete the repairs up to Line 54, demolish and clear debris from the remainder of the lot not repaired leaving the lot with an open lagoon area, extend the width of the sidewalk from the east end of the lot along the Embarcadero to the Franciscan Restaurant to a total width of twelve feet, move the ticket booth from the east end of the lot to the area adjacent to the restaurant, finish the lagoon edge, provide fencing, and finish the lot surface.

When originally approved, the goal of the project was to completely repair the parking lot with a budget not to exceed $1.3 million. However, despite the goal of a complete repair, it was understood that this might not be achieved in toto because of all the unknowns associated with such a substantial substructure repair. Franciscan has repaired the majority of the lot. However, substructure damage was much more severe than originally projected, and a portion of the east end of the lot, totaling approximately 14,000 s.f., or 19% of the lot area, has not been repaired. Work required to complete this area significantly exceeds the BCDC pile capacity allowed per the BCDC permit in addition to the fact that such work would be financially prohibitive. Franciscan is therefore proposing that the Agreement be modified to allow for partial repair of the lot and removal of the deck in the area not repaired.

To date, work has been done totaling approximately $1,200,000. Franciscan's contractors and engineer have estimated that the remaining demolition and finishing/fencing work will require an additional $200,000. This will require that Franciscan invest an additional $100,000 +/- of its own funds to complete the modified plan, as this goes beyond the original $1.3 million budget.

Neither Franciscan nor the Port believes that further significant investment in the repair is warranted.

The repaired lot is projected to accommodate 185-200 vehicles, 40-55 less than the original maximum capacity of the lot, but approximately equal to the number of spaces which have been in use on an average basis over the recent past before the repair was implemented. Based on the average per space income over the last 12 months, payback of the investment is estimated at 36 months from completion of the repair. This payback period is within the originally estimated payback period of 3-5 years.

Once the lot is complete, and rent credits are repaid, minimum annual income to the Port is estimated to be $485,000. Before September 11, 2001, rent to the Port averaged approximately $400,000 per year, including percentage rent, with the average number of spaces available for utilization at approximately 185.

RECOMMENDATION:

Port Staff recommends Port Commission approval of modifications to the Agreement as described above to allow for the partial repair of the lot for three reasons: (1) The BCDC permit allowed for only 58 piles to be replaced. To date, 42 have been installed. Franciscan's engineer estimates that the unrepaired 14,000 s.f. is so damaged that it will require a virtual "rebuild", and could utilize up to 70 additional piles. This would trigger an amendment to the BCDC permit. An amendment to the BCDC permit is unlikely to be successful as the number of piles already approved is already approaching the maximum allowed per the BCDC re-build regulations; (2) The cost of repair/rebuild for the remaining 14,000 s.f. is estimated by Franciscan's contractor to be minimally an additional $450,000. This virtual rebuild would bring the repair of the lot, including financing costs, to almost $2 million. Given the time frame allowed per the BCDC permit for parking lot operations of only 6-8 years, investment of additional funds is not economically feasible; (3) the estimated payback of the investment is within the same time period as originally projected, and income to the Port will not be significantly different than originally projected.

Prepared by: Carol Anderson
Asst. Deputy Director, Real Estate

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-05

WHEREAS, Charter, Section B3.581 empowers the San Francisco Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control the Port area of San Francisco; and

WHEREAS, By lease dated January 12, 1971, the San Francisco Port Commission entered into Port Lease No. L-7593 ("Lease") with Franciscan Restaurant ("Franciscan") for the operation of a parking lot on 72,254 square feet of Pier 43 ½; and

WHEREAS, Pursuant to Port Commission action on October 29, 2002, the Port Director was authorized to execute a separate Agreement with the Franciscan Restaurant, and that Agreement, dated October 30, 2002 was executed by both parties; and

WHEREAS, Pursuant to Port Commission action on December 11, 2002, the Port Director was authorized to enter into the first Amendment to the Agreement to provide assurances to Franciscan and the Port as to their rights and obligations prior to both parties accepting the conditions of BCDC Permit M93-16 as amended by BCDC by its action on December 5, 2002; and

WHEREAS, Port and Franciscan have agreed to modify the extent of the repairs provided for in the amended Agreement and have determined to remove approximately 14,000 square feet of deck area at the eastern end of the pier; and

WHEREAS, The Port Director now seeks authorization to enter into a Second Amendment to the Agreement authorizing the modifications to the extent of repairs required to be made pursuant to the Agreement; now therefore, be it

RESOLVED, That the San Francisco Port Commission hereby authorizes the Executive Director of the Port of San Francisco or his designee, to execute documents effecting the terms of the Second Amendment to the Agreement with Franciscan Restaurant in such form as may be approved by the City Attorney's Office and so outlined in the Memorandum to the San Francisco Port Commission for Agenda Item No. 4C for its January 13, 2004 meeting.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 13, 2004.

_____
Secretary

Second Amendment to October 30, 2002 Agreement between The City and County of San Francisco and the Franciscan Restaurant

This second amendment to the Agreement between the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City" acting by and through the San Francisco Port Commission ("Port") and the Franciscan Restaurant, a California corporation, hereinafter referred to as "Franciscan," dated the thirtieth day of October 2002, concerning the repair of the Franciscan Restaurant Parking Lot at Pier 43-½ is made this fourteenth day of January 2004, in the City and County of San Francisco, State of California.

RECITALS

WHEREAS, on or about October 30, 2002 the Port and the Franciscan entered into an Agreement concerning the allocation of costs and responsibility for undertaking necessary repairs to the Franciscan Restaurant Parking Lot at Pier 43-½, a property more particularly described in Port Lease No. L-7593, (hereinafter the "Parking Lot"), including a settlement and release of claims related thereto, as authorized by Port Commission Resolution No. 02-53; and

WHEREAS, the Franciscan and the Port, as co-permittees, sought approval from the San Francisco Bay Conservation and Development Commission (BCDC) for the necessary permit amendment to BCDC Permit No. M93-16 to undertake repair of the Parking Lot, which amendment was granted subject to certain conditions; and

WHEREAS, the Franciscan and the Port agreed to amend the Agreement, as memorialized in a document entitled First Amendment to October 30, 2002 Agreement between the City and County of San Francisco and the Franciscan Restaurant, as authorized by Port Commission Resolution No. 02-68; and

WHEREAS, the Franciscan has commenced the Repairs to the Parking Lot, as that work as described in the application to BCDC and the Agreement, but now seeks the concurrence of the Port to redefine the Repair with respect to a portion of the Parking Lot delineated on Attachment A hereto in the area between Pile lines 54 and 72 (hereinafter "Area A"); and

WHEREAS, the Franciscan notified BCDC of its plans to modify the repair work under its amended BCDC Permit No. M93-16, in two letter requests dated November 15, 2003, and December 17, 2003, and since the scope of the work now proposed is less than the permit allowed, no permit amendment is required; and

WHEREAS, the Port and the Franciscan have reached agreement to modify the Repair work for Area A, as described below and in Attachment A; and

NOW, THEREFORE, in consideration of the mutual promises set forth in this Second Amendment to the Agreement, the sufficiency and receipt of which area hereby acknowledged, the parties agree as follows:

1. Due to unforeseen conditions encountered in the execution of the Repair work, as defined in paragraph 1 of the Agreement, and the limitations imposed by BCDC Permit No. M93-16, as amended, on the number of permitted replacement pilings, the Port consents to the amended scope of work for Repair as evidenced by the Franciscan submittals to BCDC

by letters dated November 15, 2003 and December 17, 2003, and as shown on Attachment A to this Second Amendment to the Agreement, in order to complete the repairs up to pile Line 54, demolish the deck and clear debris from within the area shown shaded on Attachment A, Sheet 1, extend the width of the sidewalk from the east end of the lot along the Embarcadero to the Franciscan Restaurant to a total width of twelve feet, move the ticket booth from the east end of the lot to the area adjacent to the restaurant, finish the lagoon edge and provide fencing, as shown on Attachment A, Sheet 2 and finish the remainder of the lot surface. Franciscan will obtain appropriate permits and authorization for the Repair, as modified, and complete the work with due diligence.

2. Franciscan agrees to undertake the Repair, as amended herein by mutual consent, under the same financial terms as provided in the Agreement.

3. Franciscan agrees to complete a condition survey of the substructure and surface of the lease premises every three years for so long as the lease continues in effect, to be performed under the direction of a licensed engineer, and to submit the results of the condition survey to the Port. The first report is due January 14, 2007.

4. Except as expressly modified herein, all other terms and conditions of the Agreement, as amended, remain in full force and effect.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment to the October 30, 2002 Agreement, effective as of January 14, 2004.

PORT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its Port Commission

By: _____
Douglas F. Wong, Executive Director

APPROVED AS TO FORM:
Dennis Herrera, City Attorney

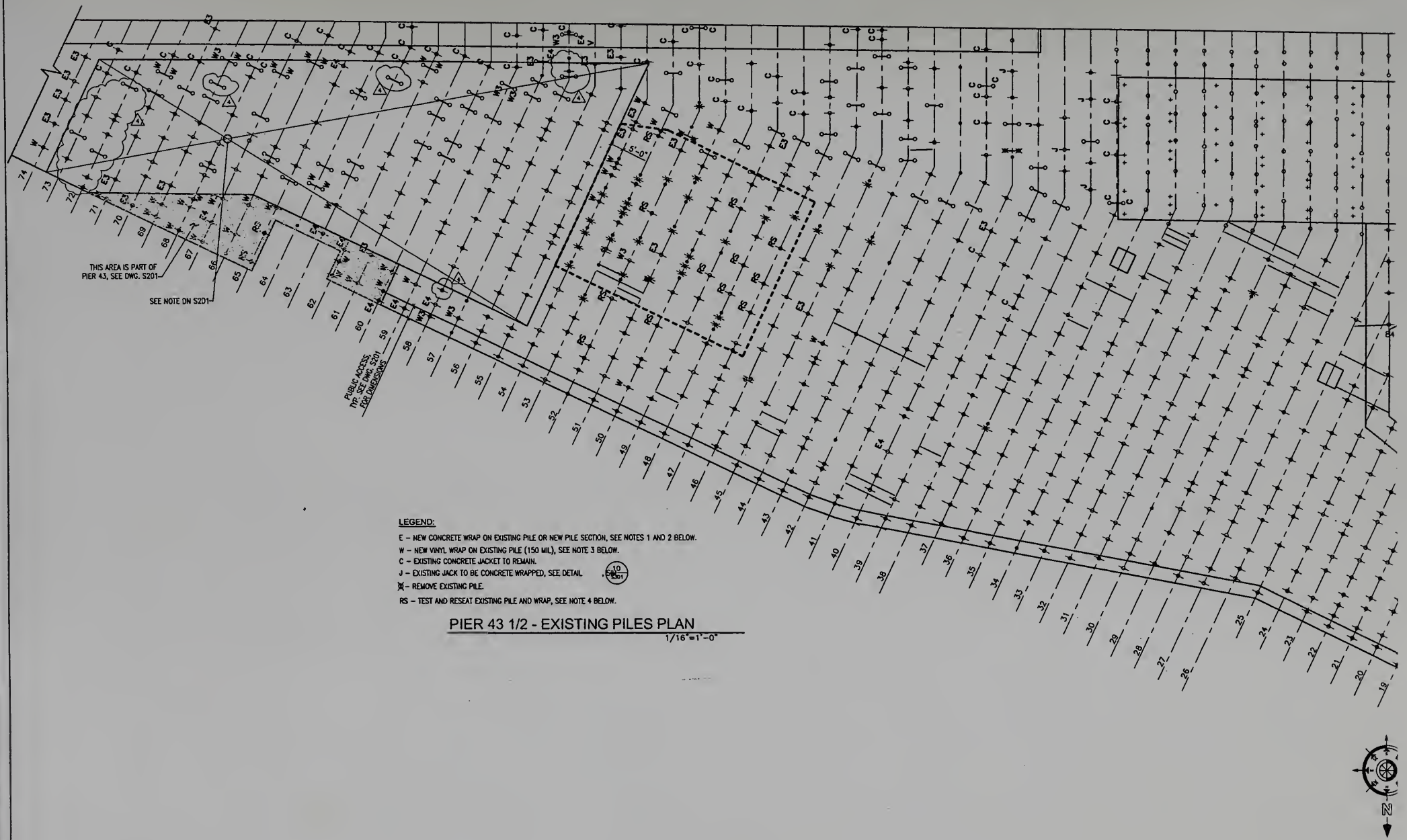
By: _____
Deputy City Attorney

FRANCISCAN:

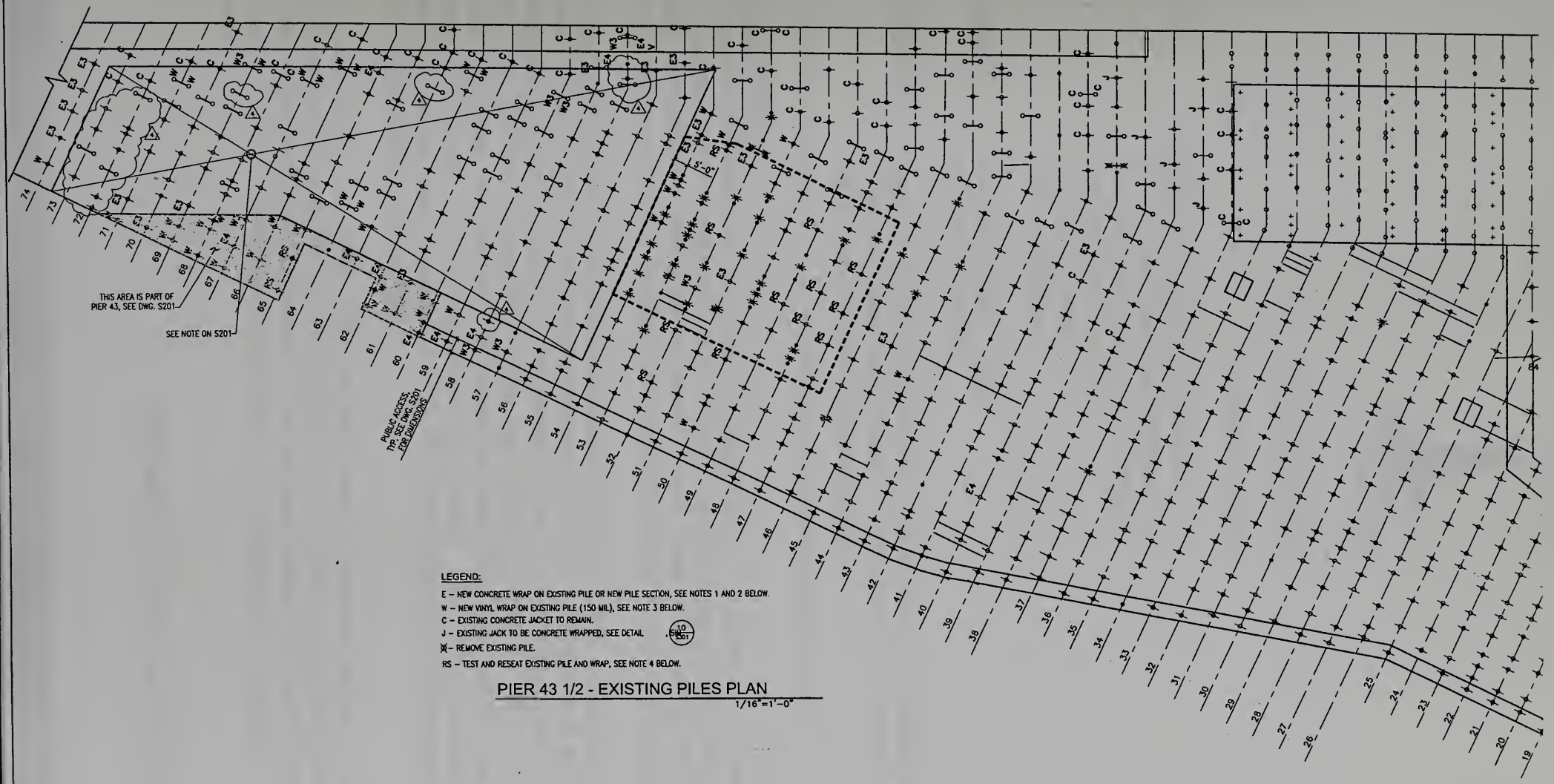
FRANCISCAN CORPORATION,
a California corporation

By: _____
Title: _____

By: _____
Title: _____


THIS AREA IS PART OF PIER 43, SEE DWG. S201
SEE NOTE ON S201
PUBLIC ACCESS, TYP. SEE DWG. S201 FOR DIMENSIONS
5'-0"
LEGEND:
E – NEW CONCRETE WRAP ON EXISTING PILE OR NEW PILE SECTION, SEE NOTES 1 AND 2 BELOW.
W – NEW VINYL WRAP ON EXISTING PILE (150 MIL), SEE NOTE 3 BELOW.
C – EXISTING CONCRETE JACKET TO REMAIN.
J – EXISTING JACK TO BE CONCRETE WRAPPED, SEE DETAIL 10/S01
X – REMOVE EXISTING PILE.
RS – TEST AND RESEAT EXISTING PILE AND WRAP, SEE NOTE 4 BELOW.
PIER 43 1/2 - EXISTING PILES PLAN
1/16"=1'-0"
N

ATTACHMENT "A"


THIS AREA IS PART OF PIER 43, SEE DWG. S201
SEE NOTE ON S201
PUBLIC ACCESS, TYP. SEE DWG. S201 FOR DIMENSIONS
5'-0"
LEGEND:
E – NEW CONCRETE WRAP ON EXISTING PILE OR NEW PILE SECTION, SEE NOTES 1 AND 2 BELOW.
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J – EXISTING JACK TO BE CONCRETE WRAPPED, SEE DETAIL 10/S201
– REMOVE EXISTING PILE.
RS – TEST AND RESEAT EXISTING PILE AND WRAP, SEE NOTE 4 BELOW.

PIER 43 1/2 - EXISTING PILES PLAN

1/16"=1'-0"

N

PORT OF SAN FRANCISCO

MEMORANDUM

January 8, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Rent Credits Issued to C.M.P. Service Partnership for Port Employee Parking Under Lease No. 12533 (SWL 351, Northwest Corner of Washington Street and The Embarcadero).

BACKGROUND

Pursuant to Port Lease No. 12533, the Port leased SWL 351 to CMP Service Partnership (CMP) for the operation of a retail parking lot. The CMP Lease commenced in 1998 on a month-to-month term and terminated effective March 31, 2003 to permit the Port to deliver SWL 351 to the developers of the Ferry Building for use as parking for the Ferry Building Marketplace.

In January 2001, the Port delivered possession of Pier 1 to AMB Properties pursuant to Port Lease No. L-12838 to effect the redevelopment of Pier 1. Prior to that date, the Port had maintained Port vehicle and employee parking in Pier 1. Upon the transfer of Pier 1 to AMB Properties, the Port relocated Port vehicle and employee parking to SWL 351. Pursuant to a verbal agreement with the Port, CMP agreed to provide the Port with the use of 65 parking spaces in return for a monthly rent credit of $3,047.20. This credit was equal to $46.88 per parking space per month, an amount equal to the monthly parking fee the Port had been charging Port employees for parking at Pier 1.

In return for the rent credit, CMP provided access to reserved spaces. In addition, CMP maintained the lot and provided a lot attendant for the security of Port employees using the lot either for the parking of Port vehicles or Port employee parking. Six spaces were used by Port vehicles, the remaining 59 spaces were rented to Port employees at a monthly rate of $46.88 per space.

THIS PRINT COVERS CALENDAR ITEM NO. 4D

In essence, the Port was passing on to its employees the Port's monthly parking "fee" paid via a rent credit to CMP Service Partnership, thereby recouping most of the rent credit issued to CMP Service Partnership. The Port absorbed the $281.28 per month attributable to the Port vehicle parking spaces as well as any unoccupied Port employee spaces.

The total rent credits issued to CMP pursuant to this agreement over the course of 26 months equaled $79,227.20. In addition, because the Port's termination of the Lease did not permit CMP to renew its monthly parking tenants through March 31, 2003, the Port agreed to a one-time rent credit of $3,742.00 or one half of the previous monthly rent to compensate CMP for keeping the lot open for Port vehicle and Port employee parking. The total amount of all rent credits issued for these two items is $82,969.00.

RECOMMENDATION

Port staff recommends approval of $82,969.00 in rent credits to CMP against its rental obligation under terminated Port Lease No. 12533.

Prepared by: Carol Anderson, Assistant Deputy Director
Nicolas Dempsey, Asset Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-06

WHEREAS, Section 3.581 of the Charter of the City and County of San Francisco empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, Section 3.581(g) of the Charter of the City and County of San Francisco provides that leases granted and made by the Port Commission should be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, Representatives of the Port entered into a verbal agreement with CMP to provide 65 parking spaces at SWL 351 for use by the Port for Port vehicle and Port employee parking to facilitate the immediate relocation of employee parking from Pier 1; and

WHEREAS, In return for providing the 65 parking spaces at SWL 351 for such use, and so long as the Port agreed to use such parking spaces, Port representatives verbally agreed to issue a rent credit of $3,047.20 against CMP monthly rental obligations under Port Lease No. 12533 in lieu of terminating the lease as to those spaces; and

WHEREAS, The Port used the 65 spaces for Port vehicle and Port employee parking for 26 months between January 2001 through March 31, 2003 and CMP retained maintenance and management responsibility for the entire lot; and

WHEREAS, In consideration for CMP 's agreement to provide the Port with Port vehicle and Port employee parking during the month of March 2003 without the opportunity to retain its monthly parking tenants at SWL 351, Port representatives agreed to issue to CMP a one time rent credit of $3,742.20 to be applied against CMP's minimum rent obligation for the month of March 2003; and

WHEREAS, The total amount of rent credits issued to CMP pursuant to such verbal agreements equal $82,969.00; and

WHEREAS, It is the finding of the San Francisco Port Commission that such rent credits were issued for valuable consideration received, and in the best interests of the Port and its employees; NOW THEREFORE, BE IT

RESOLVED, that the San Francisco Port Commission hereby approves the issuance of rent credits to CMP in the total amount of $82,969.00 to be applied against CMP rent obligations under terminated Port Lease No. 12533; and be it further

RESOLVED, that the San Francisco Port Commission directs the Executive Director to make such journal entries or undertake such other accounting procedures so as to effect the application of such rent credits.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 13, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

January 6, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Request for Authorization to Award Construction Contract No. 2690, "Pier 45 Shed C Development Phase I," to Pioneer Contractors, Inc., the lowest responsive, responsible bidder.

DIRECTOR'S RECOMMENDATION: AUTHORIZE PORT STAFF TO AWARD CONSTRUCTION CONTRACT No. 2690, "PIER 45 SHED C DEVELOPMENT PHASE I," TO PIONEER CONTRACTORS, INC.

Introduction:
Port staff requests that the Commission authorize the award of the construction Contract No. 2690, " Pier 45 Shed C Development Phase I," to Pioneer Contractors, Inc., the lowest responsive responsible bidder for this contract. The scope of this contract includes replacement of the roof, installation of a fire alarm system, and installation of a video surveillance system.

Background:
On June 24, 1997, the San Francisco Port Commission adopted the Waterfront Land Use Plan, which included the following as its first objective for the Fisherman's Wharf Waterfront: "Restore and expand Fisherman's Wharf as a working fishing port." Also, on November 9, 2000, the San Francisco Port Commission authorized and directed Port staff to immediately commence the planning, design and engineering of improvements for fishing industry uses in Pier 45 Shed C. Port staff completed the design of the new fish processing facilities last year. At its August 27, 2002, meeting, the Port Commission authorized staff to advertise for competitive bids for this project.

Port staff was unable to identify any tenants for the proposed Shed C fish processing facility due to the recent economic downturn in the fishing industry. Consequently, the Port Commission

This Print Covers Calendar Item No. 5A

approved partial de-funding of this project on February 11, 2003. Due to lack of full funding, the Port staff divided this project into two phases as follows:

- Phase I: Replacement of the roof, installation of a fire alarm system, and installation of a video surveillance system.
- Phase II: Other necessary improvements to complete development of modern fish processing facilities at Pier 45 Shed C.

Summary of Phase I Bidding:
On August 27, 2002, the Commission authorized advertisement for competitive bids for "Pier 45 Shed C Development." Port Staff advertised for the first phase of this construction project in November 2003. The Human Rights Commission staff set subcontracting goals of 8.5% for MBE and 3.5% WBE for the project. Port staff received eight bids on December 18, 2003. The Port Engineering and Human Rights Commission staff reviewed the bids and have determined that Pioneer Contractors, Inc. is the lowest responsive, responsible bidder with a bid price of $1,042,450.00. A summary of all of the bids is attached.

Phase I Funding:
The contract for Phase I work would be funded as follows:

Funding Sources	Amount
California Technology Trade and Commerce Agency Grant	$1,007,105
Port Capital Funds.	$ 139,590
Total	$1,146,695

Phase II Work:
A contract for Phase II work will be advertised for competitive bids when funds are secured.

Summary:
Port staff recommends that the Commission authorize the award of the Contract No. 2690 to Pioneer Contractors, Inc. as the lowest responsive, responsible bidder, for the amount of $1,042,450.00, plus a 10% contingency, $104,245.00, for a total of $1,146,695.00. Staff also recommends that the Commission authorize the Executive Director to accept the work once it is complete.

Prepared by: Mojgan Yousefkhan
Project Manager
For: Ed Byrne
Acting Chief Harbor Engineer

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-02

WHEREAS, the Port Commission, at its meeting on June 24, 1997, adopted the Waterfront Land Use Plan, which included the following as its first objective for the Fisherman's Wharf Waterfront: " Restore and expand Fisherman's Wharf as a working fishing port."; and

WHEREAS, the Port Commission, at its meeting on November 9, 2000, authorized and directed Port staff to immediately commence the planning, design and engineering of improvements for fishing industry uses in Pier 45 Shed C, and directed Port staff to pursue grant funding for such improvements; and

WHEREAS, the Port Commission, at its meeting on August 27, 2002, authorized the advertisement of the construction contract for the Pier 45 Shed C Development project; and

WHEREAS, Port staff received eight bids on December 18, 2003; and

WHEREAS, the Port Engineering and the Human Rights Commission staff reviewed the bids and have determined that Pioneer Contractors, Inc. is the lowest responsive, responsible bidder for the contract; and

WHEREAS, Pioneer Contractors, Inc. submitted a bid price of $1,042,450.00 and its bid satisfies the Human Rights Commission's MBE/WBE goals; and

WHEREAS, the project cost will be funded from Port capital funds and the California Technology Trade and Commerce Agency grant; now therefore be it,

RESOLVED, that the San Francisco Port Commission hereby authorizes staff to award construction Contract No. 2690, Pier 45 Shed C Development Phase I, to Pioneer Contractors, Inc. for the amount of $1,042,450.00, plus a 10% contingency, for a total contract amount of $1,146,695.00; and be it further

RESOLVED, that the San Francisco Port Commission hereby authorizes the Executive Director to accept the work upon completion.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 13, 2004.

_____
Secretary

BID SUMMARY RESULT

Project: Pier 45 Shed C Development Phase I
Contract No.: 2690

Prepared By: Mojgan Yousefkhan
Bids Opening Date: 12/18/03

Bid Item	DESCRIPTION	Quantity	Icenogle Const. SF, CA		Pioneer Const. SR, CA		Fine Line Cons. SF, CA		M H Const. SF, CA		Angotti & Reilly SF, CA		Trico Const. SF, CA		Best Roofing SF, CA		LC General Const. SF, CA	
			Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Demolish existing roof, remove and dispose all salvaged and hazardous materials	N/A	N/A	$148,285.00	N/A	$158,980.00	N/A	$269,535.00	N/A	$176,400.00	N/A	$200,000.00	N/A	$160,260.00	N/A	$207,830.00	N/A	$189,905.00
2	Repair roof decking	7000	3.73	$26,110.00	10.43	$73,010.00	15.24	$106,680.00	11.66	$81,620.00	34.286	$240,000.00	12.82	$89,740.00	3	$21,000.00	8.863	$62,041.00
3	Replace 2 X 10 header	200	21.34	$4,268.00	11	$2,200.00	14.78	$2,956.00	16.65	$3,330.00	10	$2,000.00	11.75	$2,350.00	55	$11,000.00	60.94	$12,188.00
4	Replace 4 X 6 blocking	200	23.77	$4,754.00	13.5	$2,700.00	16.22	$3,244.00	11.1	$2,220.00	10	$2,000.00	17.09	$3,418.00	55	$11,000.00	72.01	$14,402.00
5	New Roofing	N/A	N/A	$437,661.00	N/A	$354,060.00	N/A	$422,000.00	N/A	$397,700.00	N/A	$400,000.00	N/A	$395,308.00	N/A	$645,000.00	N/A	$463,440.00
6	Roof Flashing	N/A	N/A	$157,498.00	N/A	$78,600.00	N/A	$60,000.00	N/A	$89,700.00	N/A	$120,000.00	N/A	$106,840.00	N/A	$38,000.00	N/A	$104,144.00
7	Restoration & recaulking of all rooftop clearstory glazing	N/A	N/A	$14,645.00	N/A	$60,000.00	N/A	$50,454.00	N/A	$51,800.00	N/A	$100,000.00	N/A	$44,339.00	N/A	$164,170.00	N/A	$22,158.00
8	Replacement of broken & damaged rooftop clearstory glazing	100	154.25	$15,425.00	270	$27,000.00	78.2	$7,820.00	721.5	$72,150.00	40	$4,000.00	48.08	$4,808.00	450	$45,000.00	132.95	$13,295.00
9	Allowance for repair and/or replacement of steel window frames in rooftop clearstory	N/A	N/A	$25,000.00	N/A	$25,000.00	N/A	$25,000.00	N/A	$25,000.00	N/A	$25,000.00	N/A	$25,000.00	N/A	$25,000.00	N/A	$25,000.00
10	Painting	N/A	N/A	$47,294.00	N/A	$45,000.00	N/A	$99,445.50	N/A	$23,800.00	N/A	$15,000.00	N/A	$37,394.00	N/A	$10,000.00	N/A	$33,237.00
11	Roof Drain	N/A	N/A	$54,841.00	N/A	$33,000.00	N/A	$104,920.50	N/A	$38,850.00	N/A	$50,000.00	N/A	$46,903.00	N/A	$45,000.00	N/A	$37,115.00
12	Replace roof Ventilators	N/A	N/A	$10,687.00	N/A	$6,000.00	N/A	$5,646.00	N/A	$7,000.00	N/A	$12,500.00	N/A	$6,875.00	N/A	$4,000.00	N/A	$7,201.00
13	Mobilization	N/A	N/A	$50,000.00	N/A	$18,000.00	N/A	$15,697.85	N/A	$48,000.00	N/A	$20,000.00	N/A	$37,394.00	N/A	$12,000.00	N/A	$40,000.00
	Grand Total All Lump Sump Items and Unit Price Items			$996,468.00		$883,550.00		$1,173,398.85		$1,017,570.00		$1,190,500.00		$960,629.00		$1,239,000.00		$1,024,126.00
	Bid Discount			10.00%		10.00%		0.00%		10.00%		5.00%		10.00%		10.00%		10.00%
	Grand Total After Applying Bid Discount			$896,821.20		$795,195.00		$1,173,398.85		$915,813.00		$1,130,975.00		$864,566.10		$1,115,100.00		$921,713.40
A1	Fire alarm	N/A	N/A	$57,550.00	N/A	$68,900.00	N/A	$94,470.00	N/A	$168,000.00	N/A	$0.00	N/A	$85,988.00	N/A	$60,000.00	N/A	$55,000.00
A2	Video Surveillance system	N/A	N/A	$35,749.00	N/A	$58,000.00	N/A	$64,656.00	N/A	$52,800.00	N/A	$0.00	N/A	$54,064.00	N/A	$60,000.00	N/A	$39,500.00
A3	Install Ladders	N/A	N/A	$18,321.00	N/A	$32,000.00	N/A	$31,000.00	N/A	$30,500.00	N/A	$0.00	N/A	$31,932.00	N/A	$21,000.00	N/A	$11,550.00
	Base+ A1 + A2+ A3			**$1,108,088.00**		**$1,042,450.00**		**$1,363,524.85**		**$1,268,870.00**			**$1,132,613.00**		**$1,380,000.00**		**$1,130,176.00**

PORT OF SAN FRANCISCO

MEMORANDUM

January 8, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Request for Approval and Ratification of Rent Adjustment with S.F. Parking, Inc. Regarding Previous Tenancy at SWL 322-I (90 Broadway).

DIRECTOR'S RECOMMENDATION: APPROVE AND RATIFY RENT ADJUSTMENT WITH SAN FRANCISCO PARKING, INC. REGARDING PREVIOUS TENANCY AT SWL 322-I (90 BROADWAY).

BACKGROUND:

San Francisco Parking Inc. (S.F. Parking) held a month-to-month holdover parking lease, as a result of a public bid, to operate the Port's parking lot located on SWL 322-I at 90 Broadway. Rent to the Port was due per this lease at a fixed minimum rent of $44,962.29. The lease commenced on November 10, 1998 and expired on November 14, 2000. S.F. Parking continued to occupy the lot under a month-to-month holdover tenancy. On August 23, 2002, S.F. Parking delivered a letter to the Port, Executive Director of the Port of San Francisco, requesting a restructure of the S.F. Parking lease at Seawall Lot 322-I (the "Lease"). S.F. Parking proposed to change the basic rent structure from a guaranteed minimum rent of $44,962.29 per month to a percentage based rent formula whereby S.F. Parking would pay to the Port seventy-seven percent (77%) of gross parking revenues net of parking taxes. S.F. Parking explained that the fixed rental amount due on the lease had become unachievable due to the downturn in the economy and its ripple effects on parking. In this letter, S.F. Parking indicated that should the Port not agree with its proposal, it would be forced to tender a 30-day notice to terminate the Lease as the fixed financial responsibility per the agreement had become a burden which could not be sustained.

Anticipating that this retail opportunity would have to be placed out to bid, a somewhat lengthy process, Port staff agreed to the proposed rent adjustment in order to secure the operation of the lot until a new operator had been selected. This rent restructure provided higher revenues than otherwise attainable during the bidding process and would allow for a seamless transfer from S.F. Parking to the new parking lot operator.

THIS PRINT COVERS CALENDAR ITEM NO. 6A

Had San Francisco Parking terminated the lease, the Port would have assigned the operation of the lot to another Port parking vendor, Central/Allright Parking, pursuant to provisions of its lease with the Port at SWL 322 (NWC Broadway and the Embarcadero). The Central/Allright lease requires the tenant to accept the assignment and pay to the Port a rent equal to only 66% of gross receipts net of parking taxes. San Francisco Parking had agreed to pay a higher amount (77%) thereby securing greater revenues to the Port pending a rebidding of the parking lot opportunity.

As of October 2002, S.F. Parking began making lease payments based on the restructured formula, and rent payments were accepted by the Port as paid by S.F. Parking. Negotiation continued, but by February 2003 Port staff informed S.F. Parking of the Port Commission's direction to place the parking lot operation at SWL 322-1 out to competitive bid. S.F. Parking terminated the Lease effective March 31, 2003.

With the Port's verbal consent, S. F. Parking continued to occupy the site while it closed out operation, terminated monthly parking agreements, and removed its fixtures and equipment until the month of April, in preparation for Central-Allright Parking taking over the site operation on May 1, 2003 (as interim operator prior to the Port's publicly bidding out the parking lot operation). During the month of April 2003, S.F. Parking continued to accept revenues for both monthly and daily parking customers which revenues totaled $24,870.00.

In summary, during the period between October 1, 2002 and April 30, 2003, the Port continued to bill S. F. Parking a base rent of $44,962.29 as adjusted in March 2003 by the CPI to $45,315.24 instead of the proposed 77% of gross revenues, net of San Francisco parking taxes. S. F. Parking made payments to the Port based on 77% of gross revenues for the period October 1, 2002 through March 31, 2003. The Port Accounting Department did not adjust its billings. As a result, the Customer Account Detail now indicates overdue charges for rent and service charges of $192,920.24. The Accounts Receivable Department has applied S. F. Parking's security deposit totaling $58,010.35 to this balance, which has reduced this amount to $76,774.25.

PROPOSAL

Port staff proposes the following: Rent due to the Port for the months of October 1, 2002 through March 2003, shall equal to 77% of gross revenues received by S. F. Parking, net of City parking taxes and 100% of such gross receipts for the month of April 2003 for a total rent due of $209,409. The result, after application of the security deposit, will be a net amount owed by the Port to S. F. Parking of $40,863.74.

ANALYSIS

Port staff recommends that the Port Commission approve the proposed rent restructure per the terms set forth above. During the period in which this was happening, Port staff had concluded that the market had changed considerably and that the proposed percentage rent formula of 77% (gross revenues net of parking taxes) was greater than would be achieved in the short term should the Port have inserted the Port's interim operator, Central-Allright Parking in S.F. Parking's place once S.F. Parking terminated the Lease. The Port's lease with Central-Allright

requires them to provide for interim operations and pay the Port a rent based on a percentage formula equal to sixty-six percent (66%) of gross revenues net of parking taxes). The 100% if revenues (net of parking taxes) for the month of March 2003, provides an even greater return to the Port.

RECOMMENDATION

Port staff recommends that the Port Commission approve/ratify the proposed rent adjustment per the terms set forth above. During the period in which this was happening, Port staff and concluded that the market had changed considerably and that the proposed percentage rent formula of 77% (gross revenues net of parking taxes) was greater than would be achieved in the short term should the Port have inserted the Port's interim operator, Central-Allright Parking at the lot of S.F. Parking terminated the Lease on short notice. The lease was subsequently bid out and, Port staff recommends that the Port Commission approve a settlement with San Francisco Parking on the terms as outlined above.

Prepared by: Carol Anderson, Assistant Deputy Director
Nicolas J. Dempsey, Asset Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-08

WHEREAS, Section 3.581 of the Charter of the City and County of San Francisco empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port area of the City and County of San Francisco; and

WHEREAS, Section 3.581(g) of the Charter of the City and County of San Francisco provides that leases granted and made by the Port Commission should be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, By Port Lease No. L-126633 dated November 10, 1998, the Port leased to San Francisco Parking, Inc. (S.F. Parking) SWL 322-I located at 90 Broadway in the City and County of San Francisco as a commercial parking lot; and

WHEREAS, Lease No. L-12663 expired on December 14, 2000; and

WHEREAS, Following December 14, 2000, S.F. Parking continued to occupy SWL 322-I and operate a parking lot thereon pursuant to a month-to-month holdover tenancy under the terms of the lease; and

WHEREAS, In the fall of 2002, an economic downturn had rendered the operation of a parking lot at SWL 322-I under the terms of the lease uneconomical; and

WHEREAS, In September 2002, S.F. Parking proposed to continue to operate the parking lot pursuant to a revised rent structure that would provide the Port seventy-seven percent (77%) of gross parking revenues, (net of City taxes); and

WHEREAS, The Port's alternative would have been to accept S.F. Parking's termination of the Lease and assign the opportunity to another Port lessee, pending the rebidding of the opportunity and the selection of a new operator, under another Port lease; and

WHEREAS, The assignment of the opportunity to the other Port lessee would have resulted in the Port receiving rent based on sixty-six percent (66%) of gross revenues, net of City parking taxes; and

WHEREAS, S.F. Parking agreed to pay to the Port one hundred percent (100%) of gross revenues, net of City parking taxes, for the final month of its occupancy; and

PORT OF SAN FRANCISCO

MEMORANDUM

January 7, 2004

TO: **MEMBERS, PORT COMMISSION**
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Michela Alioto-Pier
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: **Piers 27-31 Mixed Use Recreation Project: Authorize Amendment to Exclusive Rights to Negotiate agreement ("ERN") with SF Piers 27-31, LLC (aka The Mills Corporation or "Developer")**

DIRECTOR'S RECOMMENDATIONS:

Request adoption of Resolution No. 04-07 authorizing the Executive Director to execute an amendment to the Exclusive Right to Negotiate (ERN) with The Mills Corporation in connection with a Mixed Use Recreation Project located at Piers 27-31 on The Embarcadero between Greenwich and Bay Streets.

I. EXECUTIVE SUMMARY

The Port and The Mills Corporation ("Developer") are parties to an Exclusive Right to Negotiate agreement ("ERN") that sets forth the terms and conditions upon which the Port and Developer will seek to complete a written Lease Disposition and Development Agreement (LDDA), long-term lease and other documents necessary to effectuate the development of a mixed-use recreation project at Piers 27-31. The present term of the ERN expires on January 13, 2004. Owing to delays associated primarily with obtaining regulatory reviews, Developer has requested a twelve-month extension of the ERN term, to cover the period from January 13, 2004 through January 18, 2005.

Under the projected schedule, this ERN extension permits the Developer time to: (a) continue ongoing discussions with interested parties and reviewing bodies, submit a Revised Preferred Alternative and financial pro forma, and negotiate a Revised Development Memorandum that will serve as the basis for the final transaction documents; (b) complete all remaining regulatory

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reviews including the Environmental Impact Report (EIR) and Bay Conservation and Development Commission (BCDC) Major Permit; (c) prepare design and construction drawings; and (d) obtain Port Commission approval of the LDDA and Lease and Board of Supervisors' approval of the Lease.

Staff recommend approval of an ERN extension, with certain conditions, including a non-refundable Negotiating Fee of $50,000, to be paid in one installment, and a reimbursable Transaction Cost payment of no less than $230,000. Developer has already paid $30,000 of this amount under a previous extension to the ERN. Developer would pay the balance of $200,000 in four equal quarterly payments to cover Port costs for legal and real estate consulting services associated with the project and for other transactional experts within city government whose services would be paid by the Port. The Port would also set certain additional Performance Benchmarks as a condition of the extension.

II. BACKGROUND

On August 31, 2000, the Port issued an Amended Request for Proposal for a Mixed-Use Recreation Project to be developed on Piers 27, 29, 29 ½ and 31, collectively referred to as "Piers 27-31". On April 18, 2001, by Resolution No. 01-30, the Port Commission awarded the opportunity to enter into exclusive negotiations for the project to Developer. Developer and the Port executed an ERN for the initial period of June 13, 2001 to December 12, 2001, with two six-month option periods. Developer exercised both options, extending the agreement to December 12, 2002. On November 12, 2002, in Resolution 02-55, the Port Commission authorized the Executive Director to enter into a First Amendment to the ERN for the period December 12, 2002 to January 13, 2004.

III. STATUS OF THE PROJECT

In satisfaction of one of the conditions of the original ERN, in March 2002, Developer and the Port's Executive Director entered into a non-binding Development Memorandum that set forth the general terms upon which the parties would negotiate the transaction documents. Since the execution of the original Development Memorandum the Developer has submitted several formal revisions to the Preferred Alternative Site Plan: on July 3, 2002, August 2, 2002 (used for the submittal of the Environmental Assessment application to the San Francisco Planning Department's office of Major Environmental Assessment), April 4, 2003 (presented to the Port in an Informational Presentation), and June 12, 2003 (presented to the Port in an Informational Presentation and further explained in a September 23, 2003 letter to the Executive Director).

At present, the project is undergoing a series of reviews that may further alter the design and/or the set of land uses of the project. The Waterfront Design Advisory Committee, a Port advisory body, and the Design Review Board of the Bay Conservation and Development Commission have been reviewing the project jointly, and they are expected to conclude their reviews in January or February. At the encouragement of Supervisor Aaron Peskin, a series of meetings has also been planned for January among the Developer, concerned local businessemen, members of the community, the Port and the State Lands Commission staff; these meetings could also result in further changes to the project.

Over the period of the First Amendment of the ERN, beginning in December 2002, the Developer has accomplished the following:

- **Public Trust Consistency Finding by State Lands Commission.** On June 2, 2003 the State Lands Commission held that the project as proposed by Developer on that date is consistent with the Public Trust Doctrine and the Burton Act.
- **Required Presentations to Port Commission.** Twice within the period of this ERN, as required by the Performance Benchmark #8, on April 22, 2003 and June 24, 2003, the Developer gave Informational Presentations to the Commission.
- **Required Presentation of Substantially Modified Site Plan.** At the June 24, 2003 presentation and in a subsequent letter to the Executive Director, 4 dated September 23, 2003, the Developer also met the requirement by Performance Benchmark #3 to present any substantially modified Preferred Alternative Plan to the Commission and to include in that plan modified financial pro formas among other documents.
- **Presentation of the Overall Site Plan to WDAC/DRB.** Developer has presented the site plan, for the purposes of obtaining direction, to the Port's Waterfront Design Advisory Committee (WDAC) meeting jointly with the Bay Conservation Development Commission's Design Review Board (DRB). Final approval from this body must await completion of all environmental documents.
- **Submittal of the YMCA Site Plan.** Developer has prepared and submitted a YMCA Site Plan on Pier 27, as required by Performance Benchmark #4, and has continued to revise the plan to reflect input from the State Lands Commission and the WDAC/DRB.
- **Submittal of an Integrated Recreation Plan.** Developer has prepared and submitted an Integrated Recreation Plan as required by Performance Benchmark #;7, which plan has been revised as the site plan has been revised, where pertinent.
- **Revised Information for the EIR.** Developer has provided extensive information and a revised project description to the San Francisco Planning Department's office of Major Environmental Assessment, resulting from Developer's proposed changes to the site plan and uses at the site.
- **Submittal of Historic Tax Credit Applications.** Developer and Port have submitted amendments to the Part 2 Applications to the National Park Service for Historic Tax Credit reflecting proposed changes to the historic structures as a result of State Lands Commission and WDAC/DRB direction.
- **Continuation of the Community Outreach Program.** Developer has provided several status reports and other updates to the Ferry Building-Northeast Waterfront Advisory Group and to the Fisherman's Wharf Advisory Group. The Developer has also met with a newly-formed citizens group that has expressed concerns regarding the project.
- **Agreement to the Lease Disposition and Development Agreement (LDDA)** Performance Benchmark #9 requires Developer and Port to reach final agreement on the form of Development Agreement and Lease, including, without limitation, all exhibits. The parties have substantially completed a form of Lease Disposition and Development Agreement (LDDA). However, due to the significant changes that Developer has proposed to the Project described in the March 2002 Development Memorandum, the parties cannot reach final

agreement on the Lease until they have revised the terms of the Development Memorandum to reflect a Project acceptable to both parties. Negotiation of a revised Development Memorandum will be a Performance Benchmark for the proposed Second Amendment to the ERN agreement.

- **Submittal of the YMCA Guaranty**. As called for in Performance Benchmark #5, Developer has submitted a form of Guaranty under which Developer guaranties the completion of the YMCA building; however, the final form of the Guaranty has not yet been agreed upon by the parties.
- **Other Performance Benchmarks.** Developer has met the remaining Performance Benchmarks #1 (Tentative Development Schedule) and #6 (Quarterly YMCA Fundraising Reports).

IV. TASKS TO BE UNDERTAKEN DURING EXTENDED ERN TERM

During the extended ERN term, Developer will pursue the following major steps: :

- **New Site Plan**. Developer will submit a Revised Preferred Alternative Project and associated financial pro formas to Port staff for purposes of negotiating the revised Development Memorandum.
- **Development Memorandum**. Port and Developer will negotiate a revised Development Memorandum based on the revised project.
- **Historic Tax Credits**. Developer will continue to process the Part 2 historic rehabilitation application with the National Park Service.
- **EIR Process**. Developer will continue to work with the San Francisco Planning Department on the preparation and certification of the Draft and Final EIR.
- **WDAC Design Approval**. Developer will continue to present the project to the Port's Waterfront Design Advisory Committee, which must make its recommendation on the Project no earlier than publication of the Draft EIR.
- **BCDC Approval**. Developer will continue to pursue the necessary approvals from the San Francisco Bay Conservation and Development Commission ("BCDC") which must issue a Major Permit following Port Commission approval of the Lease and LDDA.
- **Performance Benchmarks**. Developer must meet all Performance Benchmarks under the ERN;

The current schedule calls for all approvals to be completed in 2004 and turnover of the Site to Developer no later than January 2005. Demolition, seismic upgrades, new building construction and tenant buildouts are expected take about 24-26 months.

V. PROPOSED TERMS OF THE ERN EXTENSION

- **Second Amendment of the ERN.** The term of the ERN will be extended through the earlier of January 18, 2005, or the date on which the Port and the Developer enter into the LDDA.

- **Extension Fee.** In consideration for the extension, Developer will pay Port an extension fee (the "Extension Fee") in the amount of Fifty Thousand Dollars ($50,000.00) to be paid upon the execution of the ERN. The Extension Fee will be non-refundable and will not be credited towards rent or any other payments due under the Lease.

- **Transaction Costs .** In addition to the Extension Fee, Developer shall pay the Port the amount of Two Hundred Thousand Dollars ($230,000) (the "Transaction Costs") to be used by the Port to pay for expenses incurred by Port in connection with the Project for outside real estate and economic consultants (including, without limitation, experts within the City that are paid by the Port, but excluding costs of Port staff) and for attorneys and legal staff (including, without limitation, costs for outside counsel and City Attorney staff not currently assigned to the Port). The Transaction Costs will include costs incurred for negotiating the LDDA, Lease, and related transaction documents, and pursuing necessary entitlements for which Port is required to be a co-permittee (such as preparing and defending an Environmental Impact Report or other documents required under CEQA, obtaining a BCDC Permit, and reviewing public trust consistency with the State Lands Commission). Developer has already paid the Port $30,000 toward the Transaction Costs. The ERN amendment will require Developer to pay the remaining $200,000 of Transaction Costs to Port in four equal payments of $50,000 each, to be paid on or before March 1, 2004, June 1, 2004, September 1, 2004, and December 1, 2004. The Port will utilize the Transaction Costs as needed (on a time-and-materials basis) during the Extended Term and any applicable period prior to Close of Escrow under the LDDA, but must return any unused funds to Developer within 90 days after the later of (1) the termination of the Exclusive Right, or (2) if the parties execute the LDDA, then after Close of Escrow under the LDDA or the earlier termination of the LDDA.

VI. PROPOSED PERFORMANCE BENCHMARKS

Exhibit A contains the proposed Performance Benchmarks for the Second Amendment of the ERN. They cover the following topics: a schedule, a monthly report, changes to Preferred Alternative Plan (including changes to the YMCA site and changes to the Integrated Recreation Plan), revised Development Memorandum including any revisions to proposed rent, community outreach program, final YMCA Guaranty, Quarterly YMCA Fundraising Reports, presentations to the Port Commission, letters of interest from potential tenants and the Lease Disposition and Development Agreement.

VII. STAFF RECOMMENDATION

Recommendation: Port staff recommends that the Port Commission adopt Resolution 04-07.

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-07

WHEREAS, Charter Section B3.581 grants to the Port Commission the authority and duty to use, conduct, operate, maintain, manage, regulate, and control the lands within the Port jurisdiction; and

WHEREAS, under Charter Section B3.581(g) leases granted or made by the Port Commission shall be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, by a Request for Proposals dated November 12, 1999, including a subsequent Amended Request for Proposals dated August 31, 2000, Addendum No. 1 dated October 2, 2000, and Addendum No. 2 dated November 17, 2000, (collectively "RFP"), the Port solicited proposals from qualified parties to lease an approximately 19-acre complex of piers under the Port's jurisdiction located at Piers 27, 29, 29 ½ and 31, in the City and County of San Francisco, and to develop and operate on the property a mixed use recreation project (the "Project") to promote the purposes of the public trust and the Burton Act.; and

WHEREAS, the Port Commission at its April 18, 2001 meeting by Resolution No. 01-30, awarded the opportunity to enter into an Exclusive Right to Negotiate agreement for the lease of the Site for the Project to SF Piers 27-31, LLC, conditional upon Developer satisfying certain conditions and authorized and directed the Executive Director of the Port, or his designee, to enter into an Exclusive Right to Negotiate; and

WHEREAS, Port and Developer entered into an Exclusive Right to Negotiate agreement, dated as of June 13, 2001 ("ERN"), as modified by the terms of letters dated December 12, 2001, March 14, 2002, and June 11, 2002, and by the First Amendment to Exclusive Right to Negotiate dated as of November 27, 2002 (collectively, "Exclusive Right"); and

WHEREAS, the term of the ERN is due to expire on January 13, 2004; and

WHEREAS, Developer has diligently undertaken development plans and sought environmental review in accordance with the ERN, but due to the complexity of the Project and timeframe required for the regulatory approval process has requested an extension to the ERN, and

WHEREAS, In order for the Port to expend the funds received from Developer to pay for attorney and consultant work associated with the negotiation of the Lease Disposition and Development Agreement and related transaction documents for the Project, a supplemental appropriation must be processed; now, therefore, be it

RESOLVED, that the Port Commission hereby authorizes the Executive Director of the Port to enter into a Second Amendment to the Exclusive Right to Negotiate agreement, extending the date through January 18, 2005, subject to a non-refundable Extension Fee of $50,000.00 and payment of Port transaction costs up to $230,000.00, and further on the general terms set forth in the Memorandum to Port Commissioners, dated January 7, 2004, a copy of which is on file with the Port Commission Secretary for this item; and be it further

RESOLVED, that the Port will not enter into a final Lease Disposition and Development Agreement for the Project which would allow for its development until there has been complete compliance with the California Environmental Quality Act (CEQA).

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 13, 2004.

_____
Secretary

EXHIBIT A:
PROPOSED PERFORMANCE BENCHMARKS FOR
THE SECOND AMENDMENT OF THE ERN

[Capitalized terms have the meanings ascribed to them in the Exclusive Right, or if not defined therein, in the RFP]

BENCHMARK	TIME FOR PEFORMANCE
1. TENTATIVE SCHEDULE. Developer and Port will agree on a tentative Schedule for the development of the Project including, without limitation, a timetable for Project design, regulatory approvals, community outreach, construction and lease commencement date; such schedule to be revised, as the project progresses.	Developer will continue to submit revised Schedules to Port staff , beginning no later than February 2, 2004, said schedule to be agreed upon by Port staff and Developer not less than every 30 days thereafter, unless requested by the Port to update in response to a significant event affecting the project.
2. CHANGES TO PREFERRED ALTERNATIVE PLAN. If the Preferred Alternative Plan is substantially modified during the period of the ERN extension, particularly as a result of direction provided from a regulatory entity empowered to authorize such a change, the Developer shall provide pertinent information to illustrate those changes, including, but not limited to: (a) schematic or conceptual designs, general site plans, elevations, and perspective drawings, models, photographs or other representations showing the general design and space allocation; (b) general location of uses; (c) circulation plan; (d) landscaping; (e) relationship of the Project to its surroundings (such designs shall directly address the Port Conditions pertaining to the design and programming of the Project); (e) development costs projections; and (f) preliminary cash flow projections (including development costs and detailed operation pro formas for the first 10 years of operation). Such information shall address any changes affecting the YMCA Facility and the Northeast Wharf Plaza, as well as any changes to the Integrated Recreation Plan prepared under the First Amendment to the ERN Agreement.	(a) through (e) within 45 days of a substantial change; (f) within 60 days of a substantial change.

BENCHMARK	TIME FOR PEFORMANCE
3. **REVISED DEVELOPMENT MEMORANDUM.** Port staff and Developer have agreed upon a revised Development Memorandum that establishes the Preferred Alternative Project for purposes of regulatory review and Lease negotiations, reflecting the Port Conditions (unless such conditions are modified or waived by the Port Commission, in its sole discretion, in response to public trust or other regulatory agency concerns), the matters described in the original ERN Performance Benchmark Nos. 5,6, 7, 8, and 15, and after presentation to the Port's Waterfront Design Advisory Committee, BCDC staff, the Ferry Building-Northeast Waterfront Advisory Committee, and the Port Commission. The Development Memorandum shall also establish material lease terms and the rent terms with reasonable specificity, including without limitation, types and percentages of recreation-related trust retail, and the types of, and limitations on, pre-development costs for which Developer receives a preferred return after payment of the Port's base rent. (The provisions of such revised Development Memorandum as they are incorporated into the final Lease remain subject to final approval by the Port Commission and Board of Supervisors after completion of environmental review, each in their sole discretion).	No later than March 31, 2004.
4. COMMUNITY OUTREACH. Developer and Port have agreed upon community outreach program and Developer has met goals of program in timely manner; during the period of the ERN extension this program will continue as agreed. In addition, Developer will offer to meet with the Northeast Waterfront Advisory Group (NEWAG) no fewer than four (4) times.	No later than February 4, 2004, and at least every 90 days thereafter during the Second Amendment of the ERN, Developer shall present the Project to Ferry Building-Northeast Waterfront Advisory Group (FB-NEWAG) for review, comment and question, provided that Developer will not be held in default if, through no material default of Developer, the Northeast Waterfront Advisory Group fails to meet, or fails to request attendance of the Developer at its meetings at such times during the Second Amendment of the ERN.

BENCHMARK	TIME FOR PEFORMANCE
5. YMCA FUNDRAISING. Developer and the YMCA shall report to Port staff at least every three months during the Second Amendment of the ERN, the non-confidential details of the YMCA's fundraising activities, including number of persons contacted and response, future planned fundraising activities, changes in the fundraising program, and other information reasonably requested by Port.	No later than each of the following dates during the Second Amendment of the ERN: March 31, 2004; June 30, 2004, September 30, 2004, and December 31, 2004.
6. PRESENTATIONS TO PORT COMMISSION. Developer will present its revised Preferred Alternative to the Port Commission at least twice during this ERN extension period.	No later than March 31, 2004 for the first presentation, and September 15, 2004, for the second presentation, provided that Developer will not be held in default if, through no material default of Developer, the Port Commission fails to hear the matter at one of its meetings within these dates.
7. LEASE DISPOSITION AND DEVELOPMENT AGREEMENT AND LEASE. Developer and Port shall reach final agreement on the form of Development Agreement and Lease and all exhibits thereto.	The earlier of (1) certification of the Project EIR by the Planning Commission, or (2) expiration of the Second Amendment of the ERN.

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SAN FRANCISCO
PORT COMMISSION

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JANUARY 13, 2004
MINUTES OF THE MEETING

MEMBERS, PORT COMMISSION

HON. MICHAEL HARDEMAN, PRESIDENT
HON. KIMBERLY BRANDON, VICE PRESIDENT
HON. MICHELA ALIOTO-PIER
HON. SUE BIERMAN
HON. WILFRED HSU

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE MEETING
JANUARY 13, 2004

1. **ROLL CALL**

Commission President Michael Hardeman called the meeting to order at 3:12 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Michela Alioto-Pier, Sue Bierman and Wilfred Hsu.

2. **APPROVAL OF MINUTES** - December 16, 2003 Special Meeting

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; the minutes of the December 16, 2003 meeting were adopted.

3. **EXECUTIVE**

A. Executive Director's Report. Mr. Wong reported the following:

- New Year's Eve Celebration: The City & County of San Francisco sponsored its annual waterfront fireworks display to celebrate New Year's Eve. The 19-minute fireworks display went off at midnight from several barges located in the Bay with the focal point just south of the Ferry Building. The San Francisco Police estimate the crowd at approximately 250,000.

- Groundbreaking Ceremony of Boudin's Bakery at Fisherman's Wharf: On Sunday, January 4th, Boudin Properties, Inc. broke ground for the new Boudin Bakery/Café and Market Hall at 160 Jefferson Street, the site of the former Expo Restaurant and Boudin Bakery. The development of this new 25,000 square foot $12 Million retail bakery and restaurant was made possible by the Port Commission's approval last September of a new forty-two year lease with Boudin Properties, Inc.

- Opening of the "Crossing the Bar" Restaurant: On December 17th, Leo and Bidisha Courey opened a new upscale restaurant and nightclub at Pier 33. Crossing the Bar now serves dinner and later will expand to lunches and late night entertainment. The dining theme is California cuisine with an East Indian flavor. Situated next door to Butterfly and across the street from Houston's, it will provide a new choice of restaurant in the Port's northeast waterfront.

Commissioner Hardeman announced that, without Commission's objection, the election of the Port Commission officers will be scheduled at the January 27th Commission meeting.

4. CONSENT

A. Request for approval of first amendment to Lease No. L-13313 for a portion of Pier 45 Shed A to San Francisco Museum and Historical Society and its Sublessee, Musee Mecanique, for additional term. (Resolution No. 04-03)

B. Request for approval of temporary closure of business during construction of tenant improvements for a maximum of six (6) months for Lease No. L-7493, Castagnola's Restaurant. (Resolution No. 04-04)

C. Request to enter into an amendment to the October 30, 2002 agreement with the Franciscan Restaurant for the repair of the pier surface and substructure at Pier 43-½ (Lease No. L-7593). (Resolution No. 04-05)

D. Request for approval of rent credits issued to C.M.P. Service Partnership under Lease No. 12553 at SWL 351 (northwest corner of Embarcadero and Washington Street). (Resolution No. 04-06)

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution Nos. 04-03, 04-04, 04-05, 04-06 were adopted.

5. ENGINEERING & MAINTENANCE

A. Request for authorization to award Construction Contract No. 2690, "Pier 45 Shed C Development Phase I" to Pioneer Contractors, Inc. (Resolution No. 04-02)

Project Manager Mojgan Yousefkhan presented the item and requested Commission's approval.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 04-02 was adopted.

6. REAL ESTATE

A. Request for approval of rent adjustment with San Francisco Parking, Inc. regarding previous tenancy at SWL 322-I (90 Broadway). (Resolution No. 04-08)

Asset Manager Nic Dempsey presented the item and requested Commission's approval.

Commissioner Brandon asked about the Port's policy when a parking lease expires. Mr. Dempsey replied that as in any other leases, once a lease expires, it is held over on a month-to-month basis.

Commissioner Brandon asked why the lease was not brought back to the Commission in 2002 for approval of the operator's request to change the term of the lease. Mr. Dempsey explained that it was an error on the part of staff.

In response to Commissioner Brandon's inquiry about the guaranteed minimum rent to the Port, Mr. Dempsey explained that it did not make a difference what the minimum rent was if an overage exists. The Port would still be receiving 66% of gross revenues less City taxes. If the operator has an overage, the overage would have been the operative rent figure in 2000. Obviously, staff did not feel that there was an economic benefit that would outweigh the cost and the procedures of going through. The Port was getting top dollar at the time because parking rates were as high, as Commissioner Hardeman can testify, as $20 a day for that area. The Port was receiving 66% of the gross receipts net of parking taxes. Staff did feel a need to necessarily go out to bid to enhance revenues. Had staff perceived the situation as they did later in the process where a higher minimum rent could be achieved from the percentages, it would have gone out to bid. Since this operation was put to bid, the new operator's gross revenues, in the last four months, are similar to what was experienced by the former operator in 2002. They are less than his minimum rent obligation.

Commissioner Brandon asked how the Port ended up owing money to the former operator. Mr. Dempsey replied that the Port would only owe money back to the operator if the Commission ratifies the rent adjustment.

Commissioner Brandon indicated that she does not understand the logic of ratifying the rent adjustment a year and a half later. Mr. Dempsey replied that he does not know that there is logic to it but there is equity to it. He believes that the operator acted in good faith in terms of his rent payments to the Port. Had he not, he would have in fact terminated the lease. In March, when it became clear to him that was going to be the circumstance; he terminated his lease.

Commissioner Hardeman indicated that his name was mentioned because he is familiar with the property at 777 Davis Street. It was not so long ago that one couldn't get a meter in that neighborhood and now there is just no trouble getting a meter and getting into a parking lot. He acknowledged the fact that Port staff made an error. However, the Commission is obligated to support staff's recommendation and he doubts that this will happen again. Commissioner Brandon, however, raised a good point.

Commissioner Brandon asked if staff tried to work out any other settlement. Mr. Dempsey replied that staff tried to work something out with the operator but was not successful in the negotiations other than what staff is currently proposing. There was an attempt to split it in half but it was not acceptable to the tenant.

Tim Leonoudakis, San Francisco Parking, commented that at the point in time that he approached the Port, they were on a month-to-month contract and were ready to terminate the contract. However, they were willing to stay on if they were going to get an agreement on the percentage lease which would have been higher than the safety net percentage lease the Port has with Allright Parking in the interim until it was put out to bid. In good faith, they took the direction of Port staff to stay if they agreed to pay the percentage lease. That was the only reason they stayed with the plan which was to pay the 77% as a mutually agreed figure.

Commissioner Brandon asked why it took a year and a half to put it out to bid. Mr.

Dempsey replied that it did not take a year and a half to go out to bid. This arrangement was entered into with San Francisco Parking in October 2002 and in March 2003, the tenant terminated the lease. Port staff terminated the lease and immediately started the bid procedure. The bid procedure, unfortunately, took longer. The actual contract was awarded in November. The extra time spent was for advertising the bid, reviewing the proposals, selecting a bidder and weighing their arguments and presenting to the Commission in closed and open session for approval. It is the length of the bidding process that sometimes affects the nature of the opportunity. Immediately upon the lease termination in March, the Port turned it over to Allright Parking. They will pay the Port a rent based on a percentage formula equal to 66% of gross revenues net of parking taxes.

Commissioner Hardeman remarked that under these conditions, it would behoove the Commission to uphold staff and approve this item although there is a lot of controversy surrounding it.

ACTION: Commissioner Alioto-Pier moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor; Resolution No. 04-08 was adopted.

7. PLANNING AND DEVELOPMENT

A. Request for authorization of amendment to Exclusive Rights to Negotiate Agreement ("ERN") with SF Piers 27-31, LLC (aka The Mills Corporation or "Developer") for the Pier 27-31 Mixed Use Recreation Project. (Resolution No. 04-07)

Project Manager Lynda Swanson presented the item and requested Commission's approval of Resolution No. 04-07 authorizing the Executive Director to execute an amendment to the ERN with Mills Corporation in connection with a mixed-use recreation project at Piers 27-31. The ERN expires January 13, 2004. Owing delays associated primarily with obtaining regulatory reviews, the developer has requested a 12-month extension that would extend the ERN to the middle of 2005. During this ensuing period, the developer will continue discussions with interested parties and reviewing bodies, submit a Revised Preferred Alternative and a financial pro forma as soon as a substantial modification has been made and negotiate a Revised Development Memorandum that will serve as the basis for the final transaction documents including the Lease Disposition and Development Agreement (LDDA). The long list of regulatory reviews are noted in the staff report. They include completing the Environmental Impact Report (EIR) and obtaining a BCDC permit. Also, design and construction drawings have to be completed and the Port Commission would have to approve the LDDA and the lease. The Board of Supervisors would have to subsequently approve the lease and obtain the Mayor's signature. Staff is recommending approval of the ERN extension with conditions in the performance benchmarks attached to the resolution. Staff is requesting a non-refundable negotiating fee of $50,000 to be paid at one time and a reimbursable transaction cost payment of $230,000, of which $30,000 was received in the prior period of the ERN. The balance would then be rolled forward. The developer will pay the $200,000 in four equal payments to cover Port costs for legal and real estate consulting services associated with the project and for other transactional experts.

Ms. Swanson indicated that in June, the State Lands Commission (SLC) rendered findings

that the project is consistent with the public trust. The Mills Corporation has already provided the Commission informational presentation twice. The performance benchmarks require that they again come before the Commission at least twice plus any other time there is a substantial modification to the project. The revised YMCA site plan was forwarded to the Commission as well as an integrated recreation plan. The overall site plan has been going through reviews at the Waterfront Design Advisory Committee (WDAC) meeting jointly with BCDC Design Review Board (DRB). They have met four or five times on various aspects of the project and there will probably be two more meetings. The EIR cannot be issued as a full public draft until the site plan settles down and we know exactly what the project is going to look like. Substantial progress has been made but the draft has not been released. The historic tax credit applications have been submitted. The Developer and the Port submitted amendments to the Part 2 application reflecting changes to the historic structures i.e. widening the portholes in the bulkhead buildings. The community outreach program has been extensive and is ongoing. The LDDA has been largely negotiated but not finalized. As called for in Performance Benchmark #5, from time to time, the developer has provided the Port a form of a guarantee under which the completion of the YMCA building will occur. All other performance benchmarks have been met under the current ERN.

In the next 12 months, a new site plan will be settled upon, a revised development memorandum will be concluded and approved. The LDDA will be finalized. The historic tax credits will be received. The EIR will be completed. A draft is due in April, its current schedule. The comments and responses to the draft that will make up the EIR would be available to the public in August. Approval from both the WDAC, which is in the form of a recommendation to the Commission and comments from BCDC that fold into the major permit that the developer has to get, will be concluded. All the other performance benchmarks set forth would be included. If this schedule is met, approvals will be completed by November 2004, the conveyance of the lease to the developer by January 2005 and construction will commence, taking 18-24 months depending on pier substructure issues and other matters. Ms. Swanson provided the Commission the latest copy of the site plan which was the subject of the WDAC/DRB review last night.

Nan Roth, Telegraph Hill Dwellers, addressed the site program and the issue of what the SLC considers appropriate or qualifying as a trust use on this site. A great many people are very unhappy with the project as presently structured. Some may be resigned to the current state of affairs but they have all been led to believe by the RFP that this would be a project composed of largely recreation. Therefore, she urged the Port Commission to challenge both the SLC's narrow interpretation of recreation uses suitable for the waterfront and also the way that the permitted non-maritime uses or benefits are distributed among the overall uses. She urged the Commission to add a condition to the extension requiring that more of the bonus square footage i.e. the square footage that is being permitted that is not public trust be used for recreation purposes rather than for office or retail. A lot of non-maritime office, for instance, has been permitted. A lot of non-maritime retail is being permitted. She would like to see more of that use moved over to non-maritime recreation purposes. It is not clear to her why we could not make a good faith effort to persuade SLC to accept that concept. We are accepting a formula that was pre-established, a certain amount of square footage of offices, and a certain amount of retail. SLC disallowed some of the recreation use and in its place, in some instances, retail

and office rather than recreational uses. As long as we are using a rather arbitrary method to determine what is permissible and which uses are permitted that we should be able to have more recreation. The ballpark, for instance, the fact that it is a non-trust use, yet it was permitted because of the fact that it brought people to the waterfront. The ballpark brings people to the waterfront and recreation will do too. Recreation is not getting a fair break. She would like to see SLC persuaded to broaden its concept of what kinds of recreation are permitted under the public trust. Other states permit a broader spectrum of recreation. California has the narrowest interpretation of any state. If Chelsea Piers can be in New York, why can't we have that here. The New York law is interpreted differently. In the long term, we need to work hard to try to get legislation to change the laws being interpreted in California, to bring it more in line with other states.

Ms. Roth raised the issue of community outreach. NEWAG is a wonderful group but it only reaches a narrow segment of the population and it meets at a time of the day where very few people can attend. They have not had a public meeting other than NEWAG for well over a year. There should be meetings as changes take place in this project. There should be community-wide meetings even if they're held at the Port. The meetings should be in the evening from 6-8 so more people can come. The notification list should be that of all the people who have shown an interest on this project rather than just the NEWAG list. A lot of the members of NEWAG are Port tenants rather than community. The NEWAG meetings are relatively poorly attended because of the timing, the fact that not too many people know about them and know what kind of presentation is going to be made at the meeting.

Vedica Puri, Telegraph Hill Dwellers and local attorney, represents a lot of folks in the Park Telegraph Condominium Units (at the corner of Chestnut and Montgomery), a block and a half from the Mills development. What they want and what they are concerned about is that this development happen responsibly. She urged the Commission to go ahead and authorize the amendment for 60-90 days to allow more discussions with environmental groups and with concerned citizens. This is sick-to-your stomach concern. There are many developments being proposed along the waterfront. This is a precious city, particularly the skyline. If we're going to have development, we must be able to engage in a proper form with the developer, have all the concerns aired out and do it in a timely fashion. The 60-90 day proposal will apply the appropriate pressure so that Mills come to the table. It took the Peskin resolution for Mills to come to the table and talk about the recreation component. They want Mills to adhere to the original plan they proposed. If they are willing to do that, by all means, they will support them. However, right now, they don't know that is happening and they need more time to discuss it with them. She urged the Commission to approve a 60-90 day extension to the ERN as opposed to the year that Mills is seeking.

Melanie Nutter, Citizens to Save the Waterfront and Save the Bay, understands that the Commission has received a number of letters from different community leaders and citizen groups expressing concern about the Mills project. One group in particular, Save the Bay, was unable to attend. In David Lewis' absence, she read his letter for the record. It states... "On behalf of Save The Bay's 10,000 bay area members, I request that any renewal by the Port of Mills Corp.'s Exclusive Rights to Negotiate for Piers 27-31, not exceed 60 days from the current ERN expiration date of January 13, 2004 ERN. We

remain concerned with the Mills Project as currently proposed, we are working with other community organizations to pursue serious discussions with Mills to make significant improvements to the project until at least January 30. We are optimistic that these discussions can yield significant project changes that would merit a full re-evaluation by the Port Commission regarding compliance with the RFP and Waterfront Land Use Plan. A 60-day extension is sufficient to allow such a review. Thank you for your careful consideration."

Toby Levine, Northeast Waterfront Advisory Group (NEWAG) Chair, on behalf of the committee made three points: First of all, NEWAG has not taken a position on the extension of the ERN. Over the past several months, they have seen a lot of progress. The Mills project has continued to evolve in a positive direction. At each monthly meeting, they see evidence of improvement in design, open space, recreational activities and public access. The project is undergoing intensive scrutiny and vetting from the various design review boards, from Heritage in terms of the historic preservation and by the various citizens groups. They are all making an effort to have this project be one that we can be proud of and enjoy in the future. The past few months have been difficult for the Port planning staff because there have been a number of unexpected events and many new problems to deal with in terms of this and other projects. However, they have all been flexible, serious, and inventive in working with the professionals and with the citizens to find sensible solutions to difficult problems. Secondly, in December, at the behest of the Citizens to Save the Waterfront, the Telegraph Hill Dwellers, Mills, Port staff, Port Commissioner Alioto-Pier and NEWAG, a meeting was set up with State Lands to do two things. The purpose was to provide the various groups with background data on the findings of the State Lands Commission and to address the issues of trust uses. Three NEWAG members attended the meeting. One of the members, Alec Bash, provided detailed notes. The background was very helpful to those present and could be provided to the Commission if they wish. It was made clear that non water-oriented indoor recreation was not a trust use, though public access, open space and some recreational uses are now considered trust uses. The loss of indoor recreation as a trust use was a disappointment to those present, however, the SLC staff did indicate that they would look at new recreational ideas and other possible uses on a case-by-case basis. So, the door for further discussions was left open. At the same time, SLC staff praised other Port projects: the ballpark, which draws thousands to the waterfront; the ferry building with its transit focus combined with sustainable agriculture retail; and Pier 1 as the headquarters for the Port and its historic preservation. Each of these developments has a region-wide or statewide element, which State Lands likes. Following that same logic, it seems to them that a region-wide or statewide recreation project, if it really draws people to enjoy the waterfront at the same time, should be able to become a trust use. Therefore, NEWAG asks that the Commission continue to reinforce the recreation aspects of this project to the greatest degree possible. She encouraged the Commission to keep on working with SLC and think about the future. Finally, members of the NEWAG feel that meetings with the Port Planning staff, the Citizens to Save the Waterfront, NEWAG and State Lands should continue and that their progress should be reported to the Port Commission periodically. The specific purpose would be to find ways to strengthen the recreational component of the Mills Project and to better understand the thinking and the concerns of State Lands. This is particularly important at this time because beyond this project are many other equally complicated projects waiting in the wings and having a better understanding of State Lands perspective

and hopefully eventually their support would be a benefit to all.

Jon Golinger indicated that Citizens to Save the Waterfront is a coalition of neighborhood, local business, transit and environmental organizations working to protect and enhance the San Francisco waterfront. Some members of their coalition and others are asking the Commission not to extend the project for a year but to keep it in the Commission's hands for 60 days and then take a look at it. They think that the negotiations currently underway hold a lot of promise but it's important that the developer has a real reason to be at the table. Knowing that 60 days from today, they need to report back to the Commission about the changes they've agreed to make to appease the community would be both valuable for the Port and the community. He emphasized the importance of the 60-day extension. Separately, whether or not the Commission decide to extend the lease for the 12-month or a shorter period, he urged the Commission to set a public hearing for 60 days from today so that regardless of whether the ERN is still under debate, you hear from the developer or the community at large on where this project is. He can assure the Commission that either major changes are going to be made over the next 30-60 days or they are not. Either way, it is important that the Commission keeps this project in their hands rather than let it go and see what it's like a year from now.

Paul Wermer indicated that the Neighborhood Network is a mixture of representatives from a number of neighborhood groups. First, he thanked Lynda Swanson for being very helpful and providing information on short notice when requested. Second, as many of the other speakers have proposed, they would like to see the ERN, if renewed, renewed for a shorter period, 60-90 days rather than the entire year. He asked that there be a broader, extended engagement with neighborhood groups. They were somewhat unaware of many of the issues. There are a number of effects from any development of this scale in terms of traffic, and there is also significant concern about the impact from retail activities on neighborhood retail as well as impact on traffic within nearby neighborhoods from the increased retail and restaurant services. Broader meetings and more public meetings would be helpful. Finally, the third concern relates to the scale of the project versus the traffic and transit capability that would be needed to support that. It's not clear to him how traffic impacts could be mitigated or will be mitigated at the current scale. It has a significant ripple effect not just on the Embarcadero road but into the neighborhoods.

Paul Scott, President of Telegraph Hill Dwellers, indicated that the Commission heard mention of the resolution that was introduced by Supervisor Peskin which basically called for the conclusion of these negotiations. It was going to urge the Commissioners to cease negotiations, not to extend. There were seven pages of reasons for that which he believes the Commission has seen in reviewing the resolution including the history of the project and also the fact that it is dramatically changed from the day that this Commission awarded the right to negotiate to Mills. One of the significant conditions of the award was that the project be reduced in the amount of office, retail, and recreational component. Now, we have a project after the State Lands process that has dramatically more retail, more restaurants and less recreation. This project has gone the wrong way since the time it was awarded by the Commission. That being said, those are the reasons why they at the Telegraph Hill Dwellers, endorse the position being taken at that resolution but they are not here to make that pitch. After discussions with Mills, there was an agreement to try to sort this thing out and try and find an alternative that would satisfy the community's

concerns and also work for Mills. They have been hard at work on that project. They've had a large meeting that Commissioner Alioto-Pier is familiar with and a lot of members of the community and various organizations have participated in. They don't want to come to the Commission with the larger question of should we even be continuing this discussion. They want to see if there is a solution and if there is, march forward. But if in 60-90 days, it turns out that everyone is at odds, and Mills insists on charging ahead with a project that is not what was promised or awarded, then they will not believe that continuing the discussion is a worthwhile thing to do at that point. He echoed some of the comments made earlier about keeping this project within the Commission's control. It's an important project for the waterfront. It's one of the most critical parts of the waterfront; getting it done right is imperative. The 60-90 day period is enough to allow the parties to see if something can be worked out.

Greg Asay, Citizens to Save the Waterfront, concurred with previous speakers' comments of extending the ERN to 60-90 days instead of a full year. A Commission-driven process is different from a staff-driven process as it is a public process. It's a process where people can make their comments and bring up issues that may not be brought up without that opportunity. For example, in the last six months, the retail and restaurant space for this project has gone up by 46,000 s.f. while the recreation component has gone down by 42,000 s.f. This project is still undergoing some changes. A design review board meeting was held last night and there's still no consensus on how the circulation pattern should be developed. 60-90 days would be appropriate in the timing of the EIR. The project should not move forward until the Commission signs off on the EIR. In 60-90 days, the developer could come back to make sure that the Commission is comfortable with the project and then go ahead with the EIR. If the Commission grants a year extension, by the time it comes back to the Commission, it's done. They have already invested all the time and money into the EIR process. It should come back to the Commission before the EIR gets started so they can weigh in on the changes to the project. They are trying to negotiate with Mills to make this a better project. They met with State Lands Commission and Mills in December. At that time, they gave Mills ten dates that they were open to meet. They finally heard back from them just before this meeting. The Commission is giving them leverage by having them come back to the Commission in 60-90 days. He believes that both sides are more responsive if they know that they need to come back and provide the Commission a status report. If the Commission puts it off for a year, it does not give the community leverage to work with the project sponsor or vice versa. Mr. Asay also spoke about the importance of community outreach and echoed Nan Roth's comments about having night meetings and having information released a week ahead of the meetings to give them a chance to review the materials prior to the meeting.

Ernestine Weiss, Golden Gateway Center, indicated that she recommended to former Mayor Brown to develop the piers because the Port was in terrible condition. They envisioned a balanced port and recreation was important. They met with the Chelsea group and were happy with their recreation project but it did not materialize. Every pier that is being developed is overloaded with office space, restaurant and retail. This is not the vision they had in mind. She was concerned about the lack of a traffic analysis. Mass transit should be encouraged and there should be more public outreach. The ERN should be extended for 60-90 days.

John Spratley, Project Manager of Mills Corporation, indicated that Save the Waterfront and other groups have a very admirable cause in keeping control of this process within the Port Commission. They couldn't agree more wholeheartedly. In the agenda item presented to the Commission, there are a number of benchmarks that are in place to keep the control in front of the Commission, not the least of which sometime on or before March 31st, they need to get in front of the Commission and show them what's going on with the project. It's a major point that has been brought up this evening to make sure that things are done to keep the attention of the Mills Corporation throughout this process and make sure that they are doing the things as diligently as they need to do, which is also an admirable goal but it's the goal they share as well. There are a couple of reasons but probably not the least of which is, part of this extension is a $250,000 fee to keep that extension going. If that doesn't keep someone's attention, he does not know what will. Certainly, that will keep them plugging away forward. He needs to report back to the people who financially supports the $250,000 and justify it. Secondary to that, there was a point made that was displaying why Mills has not necessary given all the attention that it needs. That example was given as a result of the resolution that Supervisor Peskin put in place that there were a number of meetings that were attempted to schedule with Mills and only until today that they heard back from Mills. They met on December 16 which Commissioner Alioto-Pier and State Lands Commission also attended. At that time, they were given several dates when the people they have been meeting with could meet with them. Unfortunately, they started backing up against the holidays and had the unavoidable conflicts. Unfortunately, the key person paramount to this negotiation, Steve Jacobsen, has been prevented from flying over because he contracted an altitude sickness. He spoke to Steve today and they have proposed a date when they can get back in front of the people to continue the conversations. For all of those reasons, he requested and urged the Commission to follow the advice of Port staff and extend the ERN for additional year to get the project done.

Ruth Gravanis, Public Trust Group, indicated that they support the Citizens to Save the Waterfront and other groups in their request that the Commission limit any extension of the ERN. The Public Trust Group was founded about 7 years ago largely through the efforts of Sylvia McLaughlin, one of the founders of Save the Bay to promote the implementation of the Public Trust Doctrine and the Tidelands Trust Act. They want to increase the public's awareness of these documents. Unlike some people, perhaps in this room, they view the Public Trust Doctrine and the Tidelands Trust Act as good things. They see them as protecting the public's property right to the bay and the shoreline. They see them as an assurance of the public benefit for all the people of the State of California, born and yet unborn, but it does not necessarily mean that they agree with what the State Lands Commission does. SLC did find this project to be trust consistent but she wants to make sure that we all know that it does not mean that it's the only project for this site that they would find to be trust consistent and it does not mean that they wouldn't like to see less office space if the project can still pencil out and result in saving the piers. She does not think that it lets us all off the hook to try to make the project more trust compliant and to provide more public benefit. To maximize the public benefit, and to minimize the privatization, that means minimize especially the amount of office space and to maximize the connection and relevance to San Francisco bay. We don't do that with t-shirt shops even if we have sharks and things printed on the t-shirts. We don't do it by putting murals with mermaids inside of a windowless gymnasium. We don't do it by pumping sea chantey music into the elevators of the office buildings. We do it in ways that are real. She

knows it's a challenge and she knows it's hard to find revenue generating recreational uses that are trust compliant but we can't possibly meet that challenge. We can't expect to if we don't open up this process to the community in a meaningful way with more public outreach and get our best minds working on it so that we can get it right this time and meet the challenge. We need to remember to preserve the shoreline for uses that can only go on the shoreline and we need to honor our connection to this jewel, San Francisco bay.

Sue Hestor, Citizens to Save the Waterfront, indicated that the Commission should look at this document and ask, Where do we get to make decisions? The Commission gets a couple presentations without the ability to make decisions because that's not what's described on the staff report. The Commission gets to make a decision at the very end, up or down on the project. As several people have pointed out, this project has been changed dramatically since the project was originally awarded. There's a lot more retail, a lot less recreation. Because there is a lot more retail, there are a lot more traffic impacts. This pier complex is at a very constraint part of the Embarcadero and they are going to generate huge amounts of retail demand which is a lot more than offices. Retail and restaurants are huge traffic generators. By shifting it, the demand has shifted and this Commission is not going to say yea or nay except today. Today is the Commission's decision as structured in the staff report. The Commission can say they're not comfortable. They would like to have the right to make a decision with a full project in it's amplified form, consistent with BCDC rules, the traffic information is presented and a hearing is scheduled in 60-90 days or the Commission can wait to the end when the developer and Port staff are totally invested in the project and the negotiations have ended and the EIR is final and the Commission can rubber stamp it. If the Commission wants to have a meaningful public input, they need to give themselves and the community a reckoning point. The staff report states that a revised development memorandum will be negotiated by March 31st, and a report will be made to the Commission. The date should be March 31st, end of April. She thinks that the process of the NEWAG isn't really working. Benchmark #4 on page 9 states that the developer will present a report to NEWAG. The NEWAG meets in the afternoon; a lot of people cannot attend the meeting. The developer comes and does a little dog and pony show and people may get documents there and they may not. Public advisory bodies should be treated with some respect because those public advisory bodies stand in the shoes of the public. They should get their documents a week to ten days in advance. There should be ample notice. There should be notice to the people who especially live in the affected area. That should be a condition; not just that they have to come to the NEWAG a couple of times. She asked the Commission to have a meaningful input as well as the public. She asked the Commission to give this project 60-90 days and to have meaningful community outreach.

Jared Eigerman, Ruben & Alter, land use attorney for the Mills Corporation, responded to Sue Hestor's comments. He does not agree that this is the opportunity for the Commission to vote it up or down. That is a very strange reading of the condition. Both the intent and the letter of the benchmark negotiated with staff is that no later than March 31st, a revised development memorandum will be presented to the Commission. The Commission will, definitely within 90 days, get to see this project again. This is in everybody's interest, which his client, John Spratley, also mentioned. He is puzzled that there is another reading of that. He reiterated that they will be back no later than March 31st to this body in public session and people will have a chance to look at the project. With regard to the issue of

lack of respect to public input, Mr. Eigerman remarked that it's not true. They have gone back to NEWAG repeatedly. He personally spent many hours of his time answering any questions, providing any document asked for and will continue to do that. They are willing to meet later in the evening and with other groups. They have been to other community groups before State Lands saw the project last year and it's time to go again. There's a benchmark in the ERN that would require them to do further community outreach. It is the bare minimum that they go back to NEWAG four times this year and he's sure they will be back many more times than that and to other groups.

Lynda Swanson indicated that there are at least five occasions in which the Commission will now hear the project. First, the revised preferred alternative will be brought back to the Commission at any time there is a substantial modification. Not only on March 31st and September but any time there is a substantial revised modification which include a revised pro-forma, the financial terms underpinning those changes. Second, there will be a revised development memorandum that will go along with all the changes that are taking place. The reason staff has not come sooner is that there are monthly changes occurring as a result of the WDAC/DRB efforts and the community discussions. Until the land use is settled and the site plan is determined, it's pointless to come back with those changes. The third is the development agreement that can take the place of the development memorandum at an appropriate time. The fourth is the lease agreement, which comes at the end but is negotiated ahead of time. The fifth is the CEQA findings, which is basically the adoption of the EIR that will also come at the end of this process.

In terms of the public meetings, Ms. Swanson stated that staff will be happy to discuss with the Commission, with Mills, with the community and with NEWAG other opportunities to widen both the number and timing of the meetings. They don't always have to be from 4-6. They don't always have to be at Pier 1. She can commit to the Commission that staff will work out a plan so that the community feels that either the NEWAG meetings meet later in the day or there will be a separate meeting opportunity for them. She reminded the Commission that as part of the EIR process, the City Planning Commission will undertake extensive meetings on the draft EIR and the developer has its own community outreach program. It's been going around for the last year to different supervisorial district; that's three parallel processes that have been in place and will be in place. She wanted to assure the Commission that staff hears the concerns and will do its best to respond to the community issues.

Commissioner Bierman indicated that this is an important project that the Supervisors several years ago began thinking and hearing about and looking at different developers. She thinks that this Commission will be best served by hearing it often so they know as it goes along what the problems are and they can get into it and help with the direction that the community thinks that it ought to be going and the developer is able to be going. She would like this project be brought back to the Commission at the end of March. She thinks that waiting a year could be disastrous; too many things will be locked in at the end of the year. The Commission needs to be aware as the project moves along; not that there will be a decision in three months but they know how things are going if people are seeing eye to eye or not. Commissioner Bierman moved approval that the Commission give this project three months with the knowledge that it won't be settled in three months but that they are aware of what's going on.

Commissioner Hardeman asked if the Commission would like to move on that amendment or continue to discuss it and get back to the amendment.

Commissioner Alioto-Pier asked for Ms. Swanson's or Mr. Byron's opinion. Ms. Swanson asked Noreen Ambrose to interpret the amendment.

Port General Counsel Ambrose asked Commissioner Bierman to clarify her amendment. She asked if the Commission would like the project be brought back before the Commission for Commission hearing or limit the ERN extension to 90 days so that it will necessarily have to come back for the Commission to decide whether or not to extend the negotiating agreement beyond that point, depending on the status of the project at that time.

Commissioner Bierman indicated that she would presume that at the end of three months, the Commission would get a status report but not make the final decision in three months. This Commission needs to know what's going on as it goes on.

Director of Planning & Development Byron Rhett indicated that, as drafted, it's staff intention to come back to the Commission with the results of the community discussions and other discussions with BCDC Design Board. It wouldn't necessarily be the end of the negotiations. The intent of the draft is that there is an obligation on the part of staff, on the part of the developer with notice to all interested community people that there will be a hearing in front of this Commission before the end of March. Staff will come back and present what they believe to be the program that resulted from the negotiations as well as the additional information they might receive from State Lands and advisory groups.

Commissioner Bierman asked about the staff's recommendation for a year extension. Mr. Rhett replied that there are a number of milestones that a developer has to tackle to get to the point where we're ready to close on the project and actually transfer the land for development. What staff customarily will do is set an outside date, in this case 12 months, to reach agreement and have different points along the way for staff to bring the development back to the Commission for consideration or to others for approvals such as the Board of Supervisors and BCDC. The assumption is that staff will solve the problems that the development has with each of these various approvals and be able, at the end of the 12-month period, to close on the project. If at any point staff can't solve one of the problems or can't satisfy BCDC, they won't approve the permit and the project can't move forward. If the Commission don't agree with the amended development program, the project will end. With the success of the Ferry Building, the cruise terminal and other development projects, staff and the developer are motivated to reach agreement with the participating groups, whether it's regulatory or community. Staff and the developer are confident that they will eventually address their concerns by amending the project, making design changes; that's why the extension is set up on a 12-month basis. Staff will come back to the Commission and to others for their sign off. If we're not successful in addressing the Commission's concerns, the Commission will not approve the development agreement. The Planning Dept. will not approve the EIR and the development will not move forward.

Commissioner Alioto-Pier clarified that if the Commission does not like what they see or

what they're hearing, they can stop the project. Mr. Rhett replied that what staff hopes is that the Commission will give staff specific directions as to what they don't like and staff will try to address that. If we're not able to do that, the Commission can end the project or direct staff to send another RFP or find another developer. As developers, both private and public, we're forever optimistic that we will solve the problem and move forward.

Commissioner Alioto-Pier understands that point of view but she just wants to clarify that that by March 31st, the process will come back to the Commission and they will have control over where it goes from that point. Mr. Rhett replied affirmatively.

Commissioner Brandon asked if this item would be brought back for action or informational presentation on March 31st. Ms. Swanson replied that staff intends to cover an action and informational item. The informational item will be the community activities that occurred. The presentation of a revised preferred alternative and the financial pro forma is subject to the Commission's approval. A revised development memorandum, which is the governing document, is also subject to Commission's approval.

Mr. Rhett mentioned that Legal Counsel Neil Sekhri pointed out that the language presently in the document is not clear on that point although that is staff's intention. Staff will make that specific in the language so it's clear that staff will be coming back to the Commission in March for approval of the amended development agreement.

Commissioner Hardeman commented that this project is moving slowly; it's been 33 months. The developers have really been raked over the coals as well as the public. This project is not moving away. The public is very good in keeping their emotions down that they don't like some of the things that have happened but nevertheless they know that it's not that the developer didn't control it or the Commission didn't control it. It's difficult to support anything that would constrain the developer to 60-90 days when in 33 months, the project is just crawling forward. The Commission could set a special hearing and public testimony in 90 days, perhaps on April 13th. Trying to do it in March, there might virtually be no changes by then or things could move along and something significant could happen. He and Commissioner Brandon have seen this project slowly moving along. Both the developer and Port staff tried to convince State Lands to keep a bowling alley, which sounds simple but SLC knocked out the bowling alley and replaced it with retail or office space. It happened and it was not our decision. He understands why staff is seeking and recommending a year extension.

Commissioner Alioto-Pier indicated that the idea for a public hearing is a good one and would be great if State Lands can attend. The general frustration that she has felt and a lot of people she has spoken with is that and is something that was brought up a lot today was the idea that recreation is taking a second to retail and office space. She mentioned that San Francisco is very important to her personally, the waterfront is very important to her personally. When she hears everybody speaks, she hears what they are saying and understands it and she feels the same way. When they all sat down with SLC, it was very interesting to hear how exactly it is that they make their decisions, which in a lot of ways, sometimes come off as being somewhat ambiguous. It's not Mills' fault. They did not pull the bowling alley. From the last discussion they had, she believes that there is some room to grow. Through these discussions, we might be able to work on getting more of the

recreation back. The idea for a public hearing is a good one. She wanted everyone to know that the Commission is certainly hearing their concerns. They feel a lot of it themselves and they are doing what they can to make this project the best project it can be. She also hears Chelsea Piers come up a lot. Had Chelsea been the developer instead of Mills, Chelsea would be going through what Mills is going through right now. It would not be the project that was discussed when this project began. It would probably look, in a lot of ways, very similar to what we have right now.

Commissioner Hsu echoed his fellow Commissioner's concern that perhaps a public hearing process in the next 90 days is a good idea. However, he also hears President Hardeman's concern that perhaps a 12-month extension is not realistic and maybe a longer term would be better but that's not what's being discussed. At issue is the 60-90 day extension or 12 months. He thinks that a 12-month extension for this kind of project is appropriate. Commissioner Alioto-Pier clarified that it is a 12-month extension with benchmarks.

Commissioner Hardeman indicated that on the advice of Mr. Sekhri that if the Commission makes an amendment to make sure that it sets a public hearing within 90 days. He believes that everybody concurs to have a hearing within 90 days. Commissioner Brandon indicated to stick with the March 31st date or before.

Commissioner Alioto-Pier indicated that it would be a good idea to have State Lands attend the hearing as well.

Mr. Spratley indicated that they could commit to a public hearing on April 13th.

Commissioner Brandon asked if staff is confident that the public hearing can take place on March 31st or it should be extended.

Mr. Rhett replied that it was staff's intent to accomplish that. He asked the developer if additional time is needed so that the hearing could happen in the first Commission meeting in April.

Commissioner Alioto-Pier asked if a separate public hearing is being scheduled. Commissioner Hardeman replied that we're talking about having the special item on the agenda, a public hearing and an informational presentation from staff and the developer.

Mr. Rhett indicated that once the Commission settles on the date, what we want to do is to provide you some language to the resolution to be absolutely clear about the hearing and the action that the Commission at the meeting.

Commissioner Alioto-Pier indicated that the public hearing would be held during the regular Commission meeting at 3 p.m. She suggested having the meeting later in the day to accommodate people who work and would like to attend the meeting. Commissioner Hardeman indicated that the time of the public hearing for this item would be set at 5 p.m. on April 13th.

Commissioner Brandon asked if the ERN extension is still for 12 months. Commissioner

Hardeman replied to the affirmative.

Commissioner Hardeman indicated that the language stating the date of the public hearing is an amendment to be inserted in the resolution so that members of the public will not think that the Commission is trying to take away their right to speak or seek their input.

Commissioner Bierman asked about staff's recommendation to extend the ERN for a year. Ms. Swanson replied that it's the developer's request and staff concurs.

Commissioner Hardeman indicated that Commissioner Hsu is knowledgeable about real estate. As a real estate person, it probably has to be more than a year but he's willing to settle for just a year.

Commissioner Hsu clarified that he does not wish it to be a year. He hopes to get it resolved within three months. However, as this project has not made it to the finish line in the last 33 months, to limit it to less than 12 months is extremely counter-productive to everybody involved. Everybody would be burdened with this kind of a discussion again. Hopefully, the 12 months would be enough.

All the Commissioners were in favor of the date of the public hearing set for April 13 at 5 p.m.

Legal Counsel Neil Sekhri clarified that right now the benchmark in the ERN states that by March 31, there will be an agreement on the Revised Development Memorandum. That Development Memorandum would be the basis for continuing negotiations for the rest of that 12-month period; that means new description of the project and what it includes and a new description of the lease and the LDDA terms. The Commission agreed that date needs to be April 13th. In response to Commissioner Brandon's comment if this is an action item by the Commission to endorse this revised development or an informational item, Mr. Rhett mentioned that it would be an action by the Commission. So when this revised Development Memorandum comes to the Commission, the ERN will clarify that it's actually a Commission action. The Commission could look at the project at that time and if they think the project is heading the wrong direction and they couldn't agree to it, the ERN does not continue. That's the benchmark that has not been met. If the Commission looks at it at that time and they're happy with the direction it is going and thinks that we should enter into the revised development memorandum on those terms, then negotiations continue for the rest of the term.

Ms. Swanson indicated that building on Mr. Sekhri's comments, staff proposed to add the following language to the resolution, "Resolved, that the Port Commission will hold a public hearing on or about the 13th of April to take action whether or not to endorse the proposed preferred alternative and LDDA and lease terms."

ACTION: Commissioner Brandon moved approval of the resolution as amended; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor; Resolution No. 04-07 was adopted.

8. NEW BUSINESS/PUBLIC COMMENT

Ernestine Weiss, Golden Gateway Commons, asked the Commission to work diligently with the Arts Commission to get their project done at Pier 7.

Commissioner Brandon announced that Supervisor Sophie Maxwell held a townhall meeting on Saturday, January 10th. The meeting was well attended. She thanked Byron Rhett and Diane Oshima for attending the meeting and supporting the Port.

9. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner Alioto-Pier seconded the motion. All of the Commissioners were in favor.

At 4:50 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING AND ANTICIPATED LITIGATION MATTERS (Discussion Items)

a. Discuss existing and anticipated litigation matters pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (2 cases):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016. (Discussion Item)

- As Plaintiff: The Port has a claim against National Metal Fabricators and other parties resulting from the March 2002 fire at the Haslett Warehouse. Consideration and approval of proposed settlement of the Port's claim for $11,290.73 in exchange for a release of National Metal Fabricators and other parties involved in renovation of the Warehouse. A copy of the proposed settlement agreement is available for inspection with the Executive Secretary for the Port, pursuant to San Francisco Administrative Code Section 67.12(b)(3).

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 92
Person Negotiating: Port: Peter Dailey, Maritime Director
*Hanson Aggregates: Bill Butler

b. Property: Piers 3, 31-½ and 33

Person Negotiating: Port: Ken Winters, Director of Real Estate
*Hornblower Yachts: Terry MacRae

c. Property: SWL 322 (Northwest corner of Embarcadero & Broadway)
Person Negotiating: Port: Ken Winters, Director of Real Estate
*Allright Parking: Matt Gnesheimer

10. RECONVENE IN OPEN SESSION

At 5:56 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Brandon moved approval of the proposed settlement of the Port's claim against National Metal Fabricators, as described in the agenda for today's meeting, and as discussed in Executive Session. Commissioner Hsu seconded the motion. All of the Commissioners were in favor; the proposed settlement was approved.

ACTION: Commissioner Bierman moved approval to not disclose any other information discussed in executive session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

11. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner Hsu seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 5:58 p.m.

SAN FRANCISCO
PORT COMMISSION

REGULAR MEETING
3:00 P.M., TUESDAY, JANUARY 27, 2004
PORT COMMISSION HEARING ROOM, 2ND FLOOR
FERRY BUILDING, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

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AGENDA

DOCUMENTS DEPT.
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1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - January 13, 2004 Meeting

3. **EXECUTIVE**

   A. Election of Port Commission Officers

   B. Executive Director's Report
   - Commissioner Alioto-Pier appointed to the Board of Supervisors
   - Cruise Operations and Environmental Workshop
   - State Lands Commission Meeting

4. **ENGINEERING & MAINTENANCE**

   A. Request for authorization to award Construction 2686, Maintenance Dredging, to Dutra Dredging. (Resolution 04-09)

   B. Request for permission to advertise for competitive bids for the Pier 47 Below Deck Fire Protection Project, Construction Contract No. 2678. (Resolution No. 04-10)

5. **REAL ESTATE**

   A. Request for approval of proposed settlement and termination of Port Leases L-12853 and L-12947; proposed amendment of the Foreign Trade Zone #3 Operating Agreement with FTZ, SF, Inc.; and proposed 5-Year Lease for Port Properties at Pier 19-23 with FTZ, SF, Inc. (Resolution No. 04-11)

6. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

7. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 48
Person Negotiating: Port: Ken Winters, Real Estate Director
*African American Cultural & Entertainment Center: Jim Jefferson

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 48.

b. Property: Pier 47
Person Negotiating: Port: Ken Winters, Real Estate Director
*W.F. Alber Inc.: Melvin Wickliffe

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 47.

c. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*Prospective Bidder(s)

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding Request for Proposals for Port property located at Pier 70.

d. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Marine Terminals Corporation (MTC): Ken Passe
Under Negotiation: ___ Price ___ Terms of Payment _X_ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 80.

8. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

9. ADJOURNMENT

JANUARYFEBRUARY 2004
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
January 27	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
February 10	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
February 24	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 3:00 p.m., unless otherwise noticed. ***The Commission Agenda and staff reports are posted on the Port's Website @ www.sfport.com.*** Contact Amy Quesada at 274-0406.

The Brannan Street Wharf Citizens Advisory Committee meets on an as-needed basis to develop a concept plan for this planned open space in the South Beach area. Meetings are held in the Bayside Conference Room at Pier 1. Contact Dan Hodapp @ 274-0625 or dan_hodapp@sfport.com

The Cruise Terminal Environmental Advisory Committee generally meets the third week of each month. Date and time to be determined. Contact Michael Nerney at 274-0416.

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at **www.sfport.com.**

ACCESSIBLE MEETING INFORMATION

Ferry Building: The Port Commission Hearing Room is located on the second floor of the Ferry Building. The main public entrance is from the west (Embarcadero) side and is served by a bank of elevators adjacent to the historic staircase. Accessible public restrooms are on the first floor at the northeast end of the building as well as on the second floor across the lobby from the Port Commission Hearing Room. The main path of travel to the Port Commission Hearing Room is equipped with remote infrared signage (Talking Signs). The Port Commission Hearing Room is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) is available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market & Spear Streets. Accessible MUNI lines serving the Ferry Building area are the F-Line, 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

A) 3 spaces in the surface lot on the west side of the Embarcadero at Washington St.
B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking. Metered street parking is available on the Embarcadero, Washington St., Folsom St. and Drumm St.

Pier 1:
The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Bayside conference rooms. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Bayside Conference rooms.

Accessible meeting information policy:
In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals. A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact John Scott, Port's ADA Coordinator, at 274-0571. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Donna Hall by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at Donna.Hall@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance by contacting Ms. Hall or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at http://www.sfgov.org/sunshine.htm

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

PORT OF SAN FRANCISCO

MEMORANDUM

January 21, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to Award Construction Contract No. 2686, "Maintenance Dredging" to Dutra Dredging Company

DIRECTOR'S RECOMMENDATION: AUTHORIZE THE AWARD OF CONTRACT NO. 2686, MAINTENANCE DREDGING PROJECT, TO DUTRA DREDGING COMPANY

The Port Commission authorized the advertisement of Construction Contract No. 2686 at its meeting on March 25, 2003. This contract is necessary for the Port's maintenance dredging program, and provides for removal of an estimated 676,000 cubic yards of dredge material through July 2005.

One bid was received on January 6, 2004. Port Engineering Staff and the Human Rights Commission Staff reviewed the bid and determined that Dutra Dredging Company is the only and, lowest responsive, responsible bidder. Dutra Dredging Company's bid price is $6,455,650, which is comparable to the engineer's estimate of $6,300,000. A summary of the bid is attached.

The scope of Construction Contract No. 2686 is divided into four dredge events. The dredging sites included in this contract are Pier 35, Pier 80, Pier 92, Islais Creek, Fisherman's Wharf, Pier 94/96 and other similar sites on the Port of San Francisco waterfront.

At the time of bid solicitation, staff recognized that available dredging funds were not sufficient to award a contract for the entire quantity of estimated dredge material. Staff therefore intends to contract for the first dredging event that includes Pier 35, Pier 94/96, and other sites as determined by staff and prioritized by business needs.

This Print Covers Calendar Item No. 4A

Staff recommends that the Commission authorize the award of this contract to Dutra Dredging Company for the initial amount of $2,730,000 for Pier 35, Pier 94/96, and other sites to be identified by Port Staff. This initial contract amount is based upon the same unit prices contained in the contractor's bid for the entire contract scope. Staff also requests authorization to modify the contract, as additional funding becomes available, to include dredging at the remaining sites, as required by business needs. Such contract modifications shall be based upon the unit prices contained in the contractor's bid, thereby permitting a modified contract price in a maximum amount of $6,455,650, plus a 10% contingency of $645,565.

Staff also recommends the Commission authorize the Executive Director to accept the work once it is complete.

Prepared by: Ken Chu, Project Engineer for
Edward F. Byrne, Acting Chief Harbor Engineer

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-09

WHEREAS, the Port Commission authorized the advertisement of Contract No. 2686 for maintenance dredging at its meeting on March 25, 2003; and

WHEREAS, this contract provides for removal of an estimated 676,000 cubic yards of dredge material through July 2005, as of the Port's maintenance dredging program; and

WHEREAS, on January 6, 2004, Dutra Dredging Company submitted the only and, lowest, responsive, responsible bid with a bid price of $6,455,650; and

WHEREAS, the scope of Construction Contract No. 2686 is divided to four dredge events that include dredging at Pier 35, Pier 80, Pier 92, Islais Creek, Fisherman's Wharf, Pier 94/96 and other similar sites; and

WHEREAS, at the time of bid solicitation, staff recognized that available dredging funds were not sufficient to award a contract for the entire quantity of estimated dredge material, and therefore, seeks to contract for the first dredging event that includes Pier 35, Pier 94/96 and other sites as determined by staff and prioritized by business needs; now therefore be it

RESOLVED, that the Port Commission hereby authorizes the award of Contract No. 2686 to Dutra Dredging Company for the initial amount of $2,730,000 for Pier 35, Pier 94/96 and other sites based upon the same unit prices contained in the contractor's bid for the entire contract scope; and be it further

RESOLVED, that the Port Commission authorizes Port Staff to modify the contract, as additional funding becomes available, to include dredging at the remaining sites, as required by business needs, and based upon the unit prices contained in the contractor's bid, thereby allowing a modified contract price in a maximum amount of $6,45,565, plus an additional 10% contingency of $645,565; and be it further

RESOLVED, that the Port Commission authorizes the Executive Director to accept the work once it is complete.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of January 27, 2004.

_____
Secretary

BID SUMMARY
PORT OF SAN FRANCISCO

Project: Maintenance Dredging
Contract No.: 2686

Project Engineer: Ken Chu
Bids Opened: 6-Jan-04

			Bidder Name Address City, State, Zip Phone #	Dutra Dredging Company 1000 Point San Pedro Road San Rafael, CA 94901 415- 258 - 6876	
Bid Item	**Bid Item Description**	**Estimated Quantity**	**Unit**	**Unit Price**	**Extension**
1	Mobilization (Refer to Section 01505 for all the requirements for this item)	4	**EA**	**$20,000.00**	**$80,000.00**
2	Dredging of suitable for unconfined aquatic disposal (SUAD) materials, transportation and disposal at Alcatraz	535,000	**CY**	**$6.75**	**$3,611,250.00**
3	Dredging of suitable for unconfined aquatic disposal (SUAD) materials, transportation and disposal at Ocean Site	41,000	**CY**	**$15.00**	**$615,000.00**
4	Dredging of not suitable for confined aquatic disposal (NUAD) materials, transportation and disposal at Winter Island	70,000	**CY**	**$25.50**	**$1,785,000.00**
5	Dredging of not suitable for confined aquatic disposal (NUAD) materials, transportation to Pier 94/96 for future disposal	10,000	**CY**	**$17.00**	**$170,000.00**
6	Transportation not suitable for confined aquatic disposal (NUAD) materials from Pier 94/96, and disposal at approved landfill	10,000	**TN**	**$9.00**	**$90,000.00**
7	Dredging, transportation and disposal of solid debris to an approved site	300	**TN**	**$200.00**	**$60,000.00**
8	Dredge survey	160	**HR**	**$240.00**	**$38,400.00**
9	Survey data reduction and volume calculations	80	**HR**	**$75.00**	**$6,000.00**
	TOTAL BID PRICE (Summation of 1 through 9)				**$6,455,650.00**

PORT OF SAN FRANCISCO

MEMORANDUM

January 21, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to advertise for Competitive Bids for the Pier 47 Below-Deck Fire Protection Project, Construction Contract No. 2678.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO ADVERTISE FOR COMPETITIVE BIDS FOR CONSTRUCTION OF THE PIER 47 BELOW-DECK FIRE PROTECTION PROJECT, CONSTRUCTION CONTRACT NO. 2678.

The Port of San Francisco has the responsibility for maintaining a fire sprinkler system in several exposed areas below the wooden Pier 47. The existing system, installed under a Port contract in 1975, recently has required increasing amounts of maintenance to stop leaks and to prevent false alarms.

The Port has Capital Funds available for the replacement of the deteriorated Pier 47 below-deck fire sprinkler system. The Engineering and Maintenance staff have completed preparation of the project's contract documents and the project is ready for competitive bidding. The Port's Real Estate Department is negotiating a cost sharing with Scoma's Restaurant to pay for the sprinklers below the restaurant lease areas. If an agreement is not finalized by the time of award, this item will be removed from the contract. The scope of the project includes the following items:

- The contractor shall furnish, install, test and provide a warranty for a new section of 8" ductile iron water main in Al Scoma Way (Jones Alley) from the land side of the seawall to Pier 47. This will include one new fire hydrant, and new fire service connections to the exposed spaces below Pier 47 and to Scoma's Restaurant.

- The contractor shall furnish, install, test and provide a warranty for a new wet-pipe fire sprinkler system to protect some of the wooden substructure below Wharves J-6, J-7, and J-8 on Pier 47 where an existing fire sprinkler system has deteriorated.

This Print Covers Calendar Item No. 4B

- The contract shall furnish, install, test and provide a warranty for a new fire alarm system for the new below-deck sprinkler system. The alarm panel shall be located near the Port's Wharfinger office on Wharf J-9.

Staff has verified that the project modifications are consistent with the original BCDC permits and do not require permit amendments. In addition, the project satisfies the requirements for Disability Access and Environmental Quality, and the Army Corps of Engineers have approved the project design. The Human Rights Commission staff has established the MBE/WBE goals of 17% and 6% respectively.

The engineer's current cost estimate for the total project construction is $300,000 and includes a reasonable construction contingency. The cost of this project will be funded with Port Capital funds. A portion of the cost may be offset by cost-sharing by Scoma's whose premises occupy a part of the project. The cost-sharing agreement is subject to negotiation by the Port's property staff.

Therefore, staff requests permission to advertise for competitive bids for Contract No. 2678, "Pier 47 Below-Deck Fire Protection."

Prepared by: Skip Zeller
Mechanical Engineer

For: Ed Byrne
Acting Chief Harbor Engineer

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-10

WHEREAS, the Port of San Francisco has the responsibility to maintain a fire sprinkler system in exposed areas below the wooden structure of Pier 47; and

WHEREAS, the existing system installed in 1975 has become deteriorated; and

WHEREAS, Port staff has prepared the plans and specifications for this construction project; and

WHEREAS, the available funding for this project includes $300,000 in operating funds; and

WHEREAS, the current engineering cost estimate for the project construction, including a reasonable contingency, is $300,000; now, therefore be it

RESOLVED, that the San Francisco Port Commission hereby authorizes Port staff to advertise for competitive bids for Contract No. 2678, "Pier 47 Below-Deck Fire Protection."

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 27, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

January 21, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Michael Hardeman, President
Hon. Kimberly Brandon, Vice President
Hon. Sue Bierman
Hon. Wilfred Hsu

FROM: Douglas F. Wong
Executive Director

SUBJECT: Proposed Settlement and Termination of Port Leases L-12853 and L-12947. Proposed Amendment of the Operating Agreement with FTZ, SF, Inc. Proposed 5-Year Lease for Port Properties at Pier 19-23 with FTZ, SF, Inc.

DIRECTOR'S RECOMMENDATION: Approve Settlement to and Termination of Port Leases L-12947 and L-12853. Approve Amendment to Operating Agreement. Approve 5-Year Lease with FTZ, SF, Inc.

ISSUE:

Big C Traders, Inc ("Big C") is the operator of Foreign Trade Zone #3 under terms of an Operating Agreement approved by the Port Commission for the period March 1, 2000 through February 28, 2030. In that capacity, Big C is a Port tenant under 1) Port Lease L-12853, for 208,240 square feet of shed space, bulkhead office and pier apron at Piers 19-23, which commenced March 1, 2000 and terminates on February 28, 2030; and 2) Port Lease L-12947, for 95,080 square feet of shed space and pier apron at Pier 23, which commenced March 1, 2000 and terminates on February 28, 2005. Big C previously held a month-to-month license No. 13081, for 71,958 square feet of office and shed space at Pier 50, Shed A which commenced April 4, 2001 and was terminated by Port by notice on September 22, 2003.

Big C is in default of the terms and conditions of Lease No. L-12853 for failure to construct 50,000 square feet of new office space at Piers 19-23. Big C is in arrears to the Port, as of December 2003 , in the amount of $782,709.18. This arrearage is for amounts due pursuant to Port Leases L-12853 and L-12947, as well as $50,952.28 still owed to the Port pursuant to Big C's license Pier 50-A.

This Print Covers Calendar Item No. 5A

The Port, Big C and FTZ, SF, Inc. (Big C's successor in interest) have been engaged in settlement discussions over the past several months and propose to resolve these issues as proposed below.

PROPOSAL:

- Terminate Port Leases L-12853 and L-12947 and execute a new five-year lease as proposed below.
- Development Opportunity per L-12853: Port has previously issued rent credits in the amount of $413,959.90 for costs related to the office development required to be constructed by Big C. Port is to receive all documents and plans related to the projected office development. There will be no further development opportunity in the new lease. In the future, the Port will be able to utilize these plans and seek another developer of this "entitled" project through a Request for Proposals.
- Substructure Responsibility: Port will be relieved of all maintenance obligations for Piers 19-23, including the pier substructure and fendering systems.
- Payment of $351,360 to the Port by Big C in two installments: $175,680 due on signing of the new lease; balance of $175,680 due on or before February 17, 2004.
- Amend Operating Agreement to reflect five year term.
- New Lease: Five Year Lease for same premises for period January 1, 2004 through December 31, 2008: 272,500 square feet of shed and apron space, $46,300/month, subject to annual C.P.I.
- Use: Foreign Trade Zone Use and associated Warehousing.
- Substructure of the Premises: If the condition of all or a portion of the fendering system or the substructure of the premises become materially impaired then the Port, in its sole discretion, may elect to perform such repairs or may terminate the lease as to the affected area at no cost or liability to the Port, and Big C shall waive all claims against the Port.
- Stipulated Judgment: The Port and the Big C will enter into a stipulated judgment which will require the Big C to remain current and in good standing on all terms and conditions of the stipulated judgment and the new lease. Any default by the tenant of any of the terms of the stipulated judgment or any of the terms of the lease will allow the Port to immediately enforce the stipulated judgment, which remedy will include regaining immediate possession of the leased premises.

BACKGROUND:

Big C is the operator of Foreign Trade Zone #3 under the terms of an Operating Agreement approved by the Port Commission. Big C is also a tenant under two current Port Leases:

Lease No. L-12853 consists of 208,240 square feet of shed and bulkhead office space and Pier Apron at Piers 19-23, has a current term of 30 years with an expiration date of February 28, 2030, and current rent of $45,214.00 per month. Under this lease, the Port is responsible for all substructure maintenance and repair. L-12853 requires Big C to develop 50,000 square feet of new office space in the Pier 19-23 bulkhead no later than December 2002. Plans for such space

were prepared and entitlement for the project was granted by the Port, the San Francisco Planning Department and BCDC. Despite diligent effort by Big C, this development could not be financed, due to the significant economic and real estate market downturn in the Bay Area, and consequently was never built. In anticipation of the development, however, Big C had received rent credits and was reimbursed for its predevelopment costs of all plans and specifications related to the proposed new office space. As a consequence, Big C is in default for failure to construct the required office improvements and to pay rent increases, which were built into the lease structure in anticipation of this office development.

Lease No. L-12947 consists of 95,080 square feet of shed space and pier apron at Pier 23, has a term of 5 years with an expiration date of February 28, 2005, and current rent of $23,376 per month . As a part of its Foreign Trade Zone activities, Big C operates a bonded customs warehouse at Pier 23. Imported products of dozens of companies are stored in this facility, duty-free, until they are needed for distribution. Big C provides loading and unloading services and full warehousing services to the duty-free bonded customs warehouse users.

Under Lease L-12853, Big C was issued rent credits for design for the office development totaling 413,959.90. On March 1, 2001, rent pursuant to L-12853 increased from $18,480 to $46,454 per month. Big C was able to pay this amount initially because the design rent credits were retroactive to September 2000 and were therefore utilized to "pay" this increased rent due the Port. Big C during this time paid 50% of the rent due per this lease arrangement. In July 2002, design rent credits expired and Big C was responsible for the full rent amount due. However, as the office development project had not been financed, it was apparent that the office project would not be constructed. Given that the anticipated additional revenue stream was not in place, Big C contended that it was not in a financial position to pay the full rental amount. At that point, Big C began paying the original lease amount of $18,480 per month, which caused Big C's account with the Port to accrue monthly arrearages.

On March 1, 2001, rent pursuant to L-12947 increased from $8300 to $20,870. Lease L-12947 payments were made in full through June 2002. As of July 2002, as in the case with Lease L-12853, Big C reverted to paying the original monthly rental amount of $8,300, which caused Big C's account with the Port to accrue monthly arrearages.

During this time, the Port and Big C were in ongoing discussions as to how to resolve the lease issues in light of Big C's failure to construct the office development. The Port and Big C were engaged in dialog centered around Big C's inability to finance its office development in light of the economic and real estate market conditions in San Francisco and the Bay Area. The rent increases called for in the leases were of growing concern to both the Port and Big C. The rent increases had been structured into the leases based on the assumption that Big C would develop the required office space per the lease resulting in an enhanced rental stream as projected. It became apparent that the office development would not come to fruition. Big C continued to pay the original rental amount of $26,780 and the deficit rent due to the Port continued to accumulate.

To date, rent due under all leases by Big C to the Port has accumulated to the total amount of $782,709.18. This includes a past due amount of $50,952.28 still owed to the Port by Big C pursuant to its previously-held license at Pier 50-A.

ANALYSIS:
Port staff recommends the proposed settlement as 1) it is most likely to result in the Port's receipt of a reasonable portion of the rent owed by Big C, 2) it will relieve the Port of responsibility to a tenant for repair of the substructure for the original thirty year lease term, and 3) it will allow for the recapture of prime real estate located at Piers 19-23 in the San Francisco waterfront within five versus thirty years, providing as-yet-unknown opportunities for the Port in the near future. The proposed recommendation will also allow the smooth continuation of the operation of Pier 23 as the foreign trade zone offices and a duty-free bonded customs warehouse by Big C. This would retain valuable waterfront union jobs and is a valuable benefit to the Port.

It is unlikely that any hostile termination of these leases will result in the Port receiving the entire amount of the past-due rental obligations. Big C could simply dissolve or file bankruptcy and thereby avoid paying the unpaid rent. Such lease terminations would most likely involve litigation, during which the unpaid rent balances would continue to grow without any likelihood of repayment.

Port staff believes the proposal is one which is beneficial to the Port, given the circumstances. The arrearage is attributable to the inability of Big C to pay the fixed rent increases per the leases, as a result of Big C's inability to finance and construct the office development and therefore realize the anticipated rental income, due to a significant downturn in the economic and real estate market. A new five year lease with FTZ, SF, Inc. will allow the Port the time to seek another foreign trade zone operator if necessary, and/or to allow FTZ, SF, Inc. to demonstrate its ability to operate the foreign trade zone without saddling it with current real estate market conditions. Such a proposal will not result in a cessation of the duty free customs warehouse operation and disruption of business for its customers.

For these reasons, Port staff believes that a quid pro quo of forgiveness of a portion of debt in exchange for return of development rights and long lease term back to the Port makes sense and provides to the Port the flexibility to capitalize on a future development opportunity during the next development cycle.

RECOMMENDATION:
Approve Settlement to and Termination of Port Leases L-12947 and L-12853. Approve First Amendment to Operating Agreement. Approve New Five-Year Lease with FTZ, SF, Inc.

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-11

WHEREAS, Charter Section B.3581 empowers the Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within the Port jurisdiction; and

WHEREAS, Big C Traders, Inc. ("Big C") and Port entered into Lease No. 12947, dated March 1, 2000, for 72,940 square feet of shed space and 22,140 square feet of pier apron located at Pier 23. The term of L-12947 is five years, expiring on February 28, 2005; and

WHEREAS, Big C and Port entered into Lease No. L-12853, dated February 1, 2000, for 158,560 square feet of shed space and 49,680 square feet of pier apron located at Pier 19 and Pier 19-23 bulkhead building. L-12853 was subsequently amended, dated December 1, 2000, to modify the rent credit provisions. The term of L-12853 is thirty (30) years, expiring on February 28, 2030; and

WHEREAS, Big C and Port entered into License to Use Space No. 13081, dated April 4, 2001, for 840 square feet of office space and 71,118 square feet of shed space at Pier 50. The License was terminated by Port by notice dated September 22, 2003, and Big C vacated the License Area on or about November 14, 2003; and

WHEREAS, Lease No. L-12853 required Big C to construct 50,000 square feet of new office space at Pier 19/23, which Big C has not done, causing them to be in default of L-12853. Port has previously issued $413,959.90 in rent credits to Big C for costs related to this office development; and

WHEREAS, Big C is in arrears to Port to date in the total amount of $782,709.18 for the two leases and the previously-held license; and

WHEREAS, Port staff has negotiated a settlement with Big C and its successor in interest, FTZ, SF, Inc., on the following terms: 1) L-12947 and L-12853 are terminated concurrently with the execution of the new lease between Port and FTZ, SF, Inc.; 2) Port and FTZ, SF, Inc. enter into a new five (5) year lease for the entire premises previously the subject of both L-12947 and L-12853; 3) the Operating Agreement between Port and FTZ, SF, Inc. is amended from a thirty (30) year term to a five (5) year term; 4) FTZ, SF, Inc. pays the Port the amount of $351,360.00 in two payments in the amount of $175,680.00 each, the first of which is due and payable upon execution of the new lease and the second of which is due on or before February 17, 2004; 4) Port and FTZ, SF, Inc. enter into a Stipulation for Entry of Judgment, which provides that any default by FTZ, SF, Inc. of either the stipulation or new lease enables Port to enforce its judgment against FTZ, SF, Inc.; and

WHEREAS, The new lease between Port and FTZ, SF, Inc. enables the Port to recapture the development rights to the premises, which is desirable waterfront property, within five years versus thirty years, as well as to be relieved of maintenance and repair responsibility for the Pier 19-23 substructure and fendering system; and

WHEREAS, Port staff believes that the proposed settlement is beneficial to the Port for the following reasons: 1) the settlement allows for the continuous operation of the Foreign Trade Zone at Pier 19-23; 2) the Port is relieved from maintenance responsibility for the substructure and fendering system at Pier 19-23; 3) the Port is able to recapture the development rights and long lease term for the Pier 19-23 Premises; 4) despite forgiving a portion of Big C's arrearage, the Port will receive a reasonable amount of the past-due rent; 5) the Port has an enforcement mechanism in the form of the stipulation in the event that FTZ, SF, Inc. is in default of any provision of the stipulation or the new lease; now, therefore, be it

RESOLVED, That the Port Commission hereby approves 1) the Proposed Lease of a portion of Pier 19-23 to FTZ, SF, Inc.; 2) the Proposed Lease Termination Agreement for Lease No. 12853 and Lease No. L-12947 between Port and Big C Traders; and 3) the Proposed First Amendment to Foreign Trade Zone #3 Operating Agreement between Port and FTZ, SF, Inc., on the terms and conditions set forth in the staff report and authorizes the Executive Director, or his designee, to negotiate and execute a final lease, lease termination agreement and first amendment to operating agreement with said tenant and its successor in interest in a form consistent with this resolution and as approved by the Office of the City Attorney.

I hereby certify that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of January 27, 2004.

_____
Secretary

SAN FRANCISCO
PORT COMMISSION

JANUARY 27, 2004
MINUTES OF THE MEETING

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MEMBERS, PORT COMMISSION

HON. WILFRED HSU, PRESIDENT
HON. MICHAEL HARDEMAN, VICE PRESIDENT
HON. KIMBERLY BRANDON
HON. SUE BIERMAN

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE MEETING
JANUARY 27, 2004

1. **ROLL CALL**

Commission President Michael Hardeman called the meeting to order at 3:12 p.m. The following Commissioners were present: Michael Hardeman, Kimberly Brandon, Sue Bierman and Wilfred Hsu.

2. **APPROVAL OF MINUTES** - January 13, 2004 Meeting

ACTION: Commissioner Brandon moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor; the minutes of the January 13, 2004 were adopted.

3. **EXECUTIVE**

A. Election of Port Commission Officers

Commissioner Hardeman opened the floor for nominations of Port Commission President.

Commissioner Bierman nominated Commissioner Hsu as President of the Commission. Commissioner Brandon seconded the motion. All of the Commissioners were in favor. Commissioner Hsu was elected President of the Commission.

Commissioner Hsu thanked his fellow Commissioners for their support.

Commissioner Hsu opened the floor for nominations of Port Commission Vice President.

Commissioner Brandon nominated Commissioner Hardeman as Vice President of the Commission. Commissioner Bierman seconded the motion. All of the Commissioners were in favor. Commissioner Hardeman was elected Vice President of the Commission.

B. Executive Director's Report:

On behalf of Port staff, Mr. Wong congratulated the newly elected officers of the Commission.

- Commissioner Alioto-Pier appointed to the Board of Supervisors: Mr. Wong mentioned that former Commissioner Michela Alioto-Pier was appointed to the Board of Supervisors and is attending her first Board meeting today. Her swearing-in ceremony was held yesterday. Many members of Port staff along with Commissioners attended the ceremony to lend their support. Staff looks forward to working with

attended the ceremony to lend their support. Staff looks forward to working with Supervisor Alioto-Pier.

- Cruise Operations and Environmental Workshop: Maritime Director Peter Dailey reported that the Port's Cruise Terminal Environmental Advisory Committee (CTEAC) held its third meeting, a two-day workshop on cruise operations and environmental issues on January 22 and 23 at Pier 1. The Port Commission directed staff to put together committees to discuss further environmental impacts of cruise ships on the bay and to work with neighborhood and community environmental organizations to investigate possible additional mitigations to offset any environmental damage that the ships may cause. Each day, approximately 50 people attended the two-day workshop. Staff was delighted at the level of participation by experts from the cruise industry, environmental groups, government and regulatory agencies, neighborhood representatives and concerned parties. There were representatives from Princess Cruise, Carnival Cruise, and Holland America Cruise Lines. 80% of the ships' owners were represented. He thanked Commissioner Bierman and Supervisor Sandoval's staff for attending the workshop. Agenda items included topics such as an overview of the current cruise operations at Pier 35 as well as the future operations at the James R. Herman International Cruise Terminal at Piers 30-32, the various overlapping and gaps of Federal, State and local air and water quality laws and regulations, the experience of the Juneau, Alaska, shoreside power facility, innovations of new engine technologies, and alternative, lower impact fuels. This workshop concluded with the environmental perspectives on air and water quality, and responses from the cruise industry. The next CTEAC meeting is scheduled for February 25 to review the Port's new berthing agreement and potential follow-up studies on shore-side power and alternative fuels. Staff will prepare a more detailed presentation on this workshop for the February 10th Port Commission meeting.

  Mr. Wong thanked Maritime staff for putting the workshop together and thanked Commissioner Bierman for attending.

- State Lands Commission Meeting: Mr. Wong indicated that State Lands Commission is a very important regulatory agency that regulates the public trust for the State of California. The Commission is composed of three members: Lt. Governor, State Finance Director and the State Controller. The State Lands Commission meets every other month and alternates between Northern and Southern California. The State Lands Commission meeting will be held at the Port Commission hearing room at the Ferry Building on Monday, February 2nd at 2 p.m. He invited the Commission to attend the meeting.

4. ENGINEERING & MAINTENANCE

A. Request for authorization to award Construction Contract No. 2686, Maintenance Dredging, to Dutra Dredging. (Resolution 04-09)

Project Manager Ken Chu indicated that on March 2003 the Port Commission authorized the advertisement of the maintenance dredging contract. The contract provides for the removal of an estimated 676,000 cubic yards of dredge material through July 2005. On

January 6, 2004, staff received one bid. Port Engineering and Human Rights Commission staffs reviewed the bid and determined that Dutra Company is the only lowest responsive and responsible bidder. Dutra's bid price was $6,455,650, which is comparable to the engineer's estimate of $6.3 million. The scope of work is divided into four dredge events; the first of which is scheduled in the second quarter of the year, which includes Pier 35 and Pier 94/96. Staff realizes that the dredging funds were not sufficient to cover the entire quantity and therefore, intends to contract for the first dredging event for the initial amount of $2,730,000. The cost of the project will be funded with the 2003/2004 Capital funds and leftover funds from the previous dredging contract. The remaining funds required for the contract will be funded with the 2004/2005 Capital budget. Mr. Chu requested Commission's authorization to modify the contract up to the maximum amount of $6,455,650 plus a 10% contingency, and as additional funding becomes available, to include dredging in the remaining sites. He requested Commission's authorization for the Executive Director to accept the work upon completion. He noted that there was a typographical error in the resolution with regards to the total contract amount. The Commission was provided a revised resolution noting the correct amount.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 04-09 was adopted.

B. Request for permission to advertise for competitive bids for the Pier 47 Below Deck Fire Protection Project, Construction Contract No. 2678. (Resolution No. 04-10)

Acting Chief Harbor Engineer Ed Byrne indicated that the Port has responsibility and funding for the replacement of the deteriorated Pier 47 below-deck fire sprinkler system. The contract documents are ready for competitive bidding. The project scope includes: (1) furnish, install, test and provide warranty for a new section of 8" ductile iron water main in Al Scoma Way from the landside of the seawall to Pier 47; (2) furnish, install, test and provide a warranty for a new wet-pipe fire sprinkler system to protect some of the wooden substructure below Wharves J6, J7 and J8 on Pier 47 where the existing fire sprinkler system has deteriorated; and (3) furnish, install, test and provide a warranty for a new fire alarm system for the new below-deck sprinkler system. Staff has verified that it is in compliance with all regulatory requirements. Human Rights Commission staff has established the MBE/WBE goals of 17% and 6% respectively. The Engineer's current cost estimate for the total project construction is $300,000 that includes a reasonable construction contingency. The cost of the project will be funded with Port Capital Funds. A portion of the cost will be offset by cost-sharing with Scoma's whose premises occupy a portion of the project. The cost-sharing agreement is subject to negotiation by the Port's real estate staff. If no agreement is reached, the work under the restaurant will be removed from the scope of the contract prior to award. Mr. Byrne requested permission to advertise for competitive bids for Contract No. 2678.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 04-10 was adopted.

5. REAL ESTATE

A. Request for approval of proposed settlement and termination of Port Leases L-12853 and

L-12947; proposed amendment of the Foreign Trade Zone #3 Operating Agreement with FTZ, SF, Inc.; and proposed 5-Year Lease for Port Properties at Pier 19-23 with FTZ, SF, Inc. (Resolution No. 04-11)

Maritime Director Peter Dailey indicated that Big C Traders is the operator for the FTZ #3 at Piers 19-23 since March 1, 2000. The original development and operating agreement between Big C and the Port was for a 30-year development plan to develop the virtual foreign trade zone that includes a very aggressive and exciting opportunity for a trade center on the northern waterfront. Big C was in default of the terms and conditions of their lease for failure to construct the 50,000 sq. ft. of new office space. Despite their diligent efforts, the development could not be financed due to the significant economic and real estate market downturn in the bay area and in the U.S and consequently was never built. In anticipation of the development, however, Big C had received rent credits and was reimbursed for its pre-development costs of all plans and specifications related to the proposed new office space. During the last several months, the Port and Big C were engaged in ongoing discussions as to how to resolve the lease issues in light of Big C's failure to construct the office development. Rent increases called for in the lease were of growing concern to both the Port and Big C. The rent increases had been structured into the leases based on the assumption that Big C would develop the required office space per the lease resulting in an enhanced rental stream as projected. It became apparent that the office development would not come to fruition. Big C continued to pay the original rent amount of $26,780 and the deficit of rent due to the Port continued to accumulate.

For the past several months, Real Estate and Maritime staffs have been engaged in settlement discussions with Big C. The proposal is as follows:

- Terminate the development rights to a very lucrative piece of Port real estate on the northern waterfront. In its place, execute a 5-year lease for the operation of a Foreign Trade Zone.
- The Port is to receive all documents and plans related to the projected office development and entitlements.
- Big C Traders will make a payment of $351,360 to the Port in two installments: $175,680 due on signing of the new lease; balance due on February 17, 2004.
- Amend the operating agreement to reflect the 5-year term.
- The use would be for foreign trade zone use and associated warehousing.
- Port and Big C would enter into a stipulated judgment.
  Mr. Dailey noted that one change from the staff report is that the stipulated judgment with Big C will have to do with the payment of the lease terms i.e. if they are in default of any of the payment provisions of the lease, staff would immediately enforce the stipulated judgment which would include regaining immediate possession of the leased premises.

Staff recommends the proposed settlement as: (1) it is most likely to result in the Port's receipt of a reasonable portion of the rent owed by Big C; (2) it will relieve the Port of responsibility to a tenant for repair of the substructure for the original 30-year lease term and; (3) it will allow for the recapture of prime real estate located at Piers 19-23 within five years versus 30 years, providing as-yet-unknown opportunities for the Port in the near future. The proposed recommendation will also allow the smooth continuation of the

operation at Pier 23 as the foreign trade zone offices and a duty-free bonded customs warehouse and it will retain valuable waterfront jobs and continue to be a benefit to the Port. Staff is in the process of executing the documents upon Commission's approval.

Commissioner Hardeman was delighted to see this item has finally come to an end. It was tough on staff as well as with the Foreign Trade Zone. Nobody could have predicted what would happen to the economy. He was glad to see this item resolved.

Commissioner Hsu indicated that the staff report states that upon default, the stipulation judgment allows the Port to immediately regain possession of the leased premises. He asked if the agreement could be modified to give the Port possession of the property at any time for potential development but would allow FTZ to continue to use the premises and pay revenues to the Port.

Mr. Dailey replied that the Port has unilateral control over the occupancy.

Lisa Clay, Deputy City Attorney, replied that there are specific provisions in the stipulation that state that the Port not exercising its right when they immediately occur, for example in the event of a default, does not in anyway waive its rights or in any way restrict them. The Port has that flexibility; it is unilaterally within the Port's control.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 04-11 was adopted.

6. NEW BUSINESS/PUBLIC COMMENT

Michael Harris, Leidesdorff Project, asked the Commission to support a resolution honoring William Alexander Leidesdorff for his many contributions to this country. Michael Harris, Sacramento resident, lives in a community called Orangeville, half a mile from an area called Negro Bar. Negro Bar was first owned by an African American named William Alexander Leidesdorff. Our distinguished treasurer has recognized him as the African Founding Father of California. Currently, ACR Bill 131 is pending in the legislature to rename 15 miles of Highway 50 after him. William Alexander Leidesdorff was the first African American diplomat in the United States history. He built the first public school. He donated land. He was on the Commission. He built the first warehouse/port in San Francisco. He owned the largest home in 1847. He built the first city hotel and many others. He has not received the recognition that he deserves as a founding father of California. The proposed resolution provided to the Commission would honor him on his birthday, March 26. The International Maritime Organization in London celebrates world maritime day on the third week of September. Last year, the Port of Sacramento started the world maritime week to talk about the industry and the lack of inclusion of minorities and what's happening in Africa. The things that Leidesdorff did years ago are what they would like to happen in Africa.

Commissioner Brandon inquired about the support Mr. Harris was requesting. Mr. Harris replied that a resolution from the Port Commission would be the first step in recognizing Mr. Leidesdorff's contributions to California.

Commissioner Bierman asked about the Leidesdorff plaque located in the financial district. Mr.

Harris replied that a plaque is indeed located in the building near Leidesdorff alley. It should be more and it should be in the history books and part of the curriculum. This Commission and others officially recognizing him will go a long way. In Sacramento, there is a street about twice the size of the San Francisco alley and 15 miles of Highway 50 will be renamed after him.

Through the President of the Commission, Commissioner Brandon asked staff to prepare a resolution in honor of William Alexander Leidesdorff.

Through the President of the Commission, Commissioner Michael Hardeman asked staff to prepare a resolution for Michela Alioto-Pier thanking her for her service at the Port.

7. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

At 3:40 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 48
Person Negotiating: Port: Ken Winters, Real Estate Director
*African American Cultural & Entertainment Center: Jim Jefferson

b. Property: Pier 47
Person Negotiating: Port: Ken Winters, Real Estate Director
*W.F. Alber Inc.: Melvin Wickliffe

c. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*Prospective Bidder(s)

d. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Marine Terminals Corporation (MTC): Ken Passe

8. RECONVENE IN OPEN SESSION

At 4:56 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Hardeman moved approval to adjourn executive session and reconvene in open session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Hardeman moved approval to not disclose any information discussed in executive session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

9. ADJOURNMENT

ACTION: Commissioner Hardeman moved approval to adjourn the meeting; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 4:56 p.m.

SAN FRANCISCO
PORT COMMISSION

REGULAR MEETING
3:00 P.M., TUESDAY, FEBRUARY 10, 2004
PORT COMMISSION HEARING ROOM, 2ND FLOOR
FERRY BUILDING, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

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AGENDA

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1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - January 27, 2004 Meeting

3. **EXECUTIVE**

   A. Executive Director's Report
      - State Lands Commission Meeting
      - 2004 Crab Festival @ Fisherman's Wharf

4. **PLANNING AND DEVELOPMENT**

   A. Request for approval of Harbor Code amendment to impose parking restrictions, post signage and place meters along Terry Francois Boulevard, Mission Rock Street and on the Wharf adjacent to Pier 48. (Resolution No. 04-13)

5. **MARITIME**

   A. Request for authorization to accept and expend $450,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for the purpose of enhancing facility and operational security at the Port's cargo terminal at Pier 80. (Resolution No. 04-12)

   B. Informational Presentation: Summary of January 22-23, 2004 Cruise Terminal Environmental Advisory Committee (CTEAC) Workshop.

6. **ADMINISTRATIVE SERVICES**

   A. Request for approval of Fiscal Year 2004/05 Capital Projects. (Resolution No. 04-14)

B. Request for approval of Fiscal Year 2004/05 Operating Budget. (Resolution No. 04-15)

7. NEW BUSINESS/PUBLIC COMMENT

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

8. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion Item)

a. Discuss existing litigation matter pursuant to California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- In re Pacific Gas and Electric Company, United States Bankruptcy Court, Northern District of California, San Francisco; Case No. 01 30923 DM.

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 26
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*International Museum of Women (IMOW): Elizabeth Colton

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 26.

b. Property: Seawall Lot 3030
Person Negotiating: Port: Peter Dailey, Maritime Director
*GP Resources: Andrew Zar

Under Negotiation: ___ Price ___Terms of Payment X Both

An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 3030.

c. Property: Pier 33-½
Person Negotiating: Port: Ken Winters, Real Estate Director
*California Foundation on the Environment: Pat Mason

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 33-½.

d. Property: Pier 64.5
Person Negotiating: Port: Ken Winters, Real Estate Director
*Kelly's Mission Rock: Jim Kelly

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 64.5.

e. Property: Seawall Lot 349
Person Negotiating: Port: Ken Winters, Real Estate Director
*Dept. of Parking & Traffic: Steve Bell

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 349.

f. Property: Pier 50, Shed A
Person Negotiating: Port: Ken Winters, Real Estate Director
*Operation USA: Michael Walden

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located a Pier 50, Shed A.

9. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

10. ADJOURNMENT

FEBRUARY 2004
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
February 10	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
February 24	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 3:00 p.m., unless otherwise noticed. ***The Commission Agenda and staff reports are posted on the Port's Website @ www.sfport.com.*** Contact Amy Quesada at 274-0406.

The Brannan Street Wharf Citizens Advisory Committee meets on an as-needed basis to develop a concept plan for this planned open space in the South Beach area. Meetings are held in the Bayside Conference Room at Pier 1. Contact Dan Hodapp @ 274-0625 or dan_hodapp@sfport.com

The Cruise Terminal Environmental Advisory Committee generally meets the third week of each month. Date and time to be determined. Contact Michael Nerney at 274-0416.

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at www.sfport.com.

ACCESSIBLE MEETING INFORMATION

Ferry Building: The Port Commission Hearing Room is located on the second floor of the Ferry Building. The main public entrance is from the west (Embarcadero) side and is served by a bank of elevators adjacent to the historic staircase. Accessible public restrooms are on the first floor at the northeast end of the building as well as on the second floor across the lobby from the Port Commission Hearing Room. The main path of travel to the Port Commission Hearing Room is equipped with remote infrared signage (Talking Signs). The Port Commission Hearing Room is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) is available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market & Spear Streets. Accessible MUNI lines serving the Ferry Building area are the F-Line, 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

A) 3 spaces in the surface lot on the west side of the Embarcadero at Washington St.
B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking. Metered street parking is available on the Embarcadero, Washington St., Folsom St. and Drumm St.

Pier 1:
The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Bayside conference rooms. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Bayside Conference rooms.

Accessible meeting information policy:
In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals. A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact John Scott, Port's ADA Coordinator, at 274-0571. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Donna Hall by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at Donna.Hall@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance by contacting Ms. Hall or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at http://www.sfgov.org/sunshine.htm

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

PORT OF SAN FRANCISCO

MEMORANDUM

February 4, 2004

TO: **MEMBERS, PORT COMMISSION**
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Sue Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Harbor Code Amendment to impose parking restrictions, post signage and place meters along Terry Francois Boulevard, Mission Rock Street and on the Wharf adjacent to Pier 48.

DIRECTOR'S RECOMMENDATION: APPROVE PROPOSED AMENDMENT TO HARBOR CODE

SUMMARY
Under the Burton Act and the Charter of the City and County of San Francisco, the Port Commission has responsibility for governing the waterfront properties within the Port's jurisdiction. The Board of Supervisors has delegated authority to the Port Commission to adopt a Harbor Code (Ordinance No. 40-69). The Port Commission has previously adopted the Harbor Code to regulate the use of vehicles and impose traffic regulations on Port property. In particular, the Commission has also used this authority to impose restricted or metered parking in certain areas within the Port's jurisdiction. Due to increasing activity in the areas of the Mission Bay development, SBC Ballpark, and areas adjacent to Pier 48, staff seeks authorization for new parking restrictions, including the installation of parking meters along Terry Francois Boulevard, Mission Rock Street and on the Marginal Wharf adjacent to Pier 48.

BACKGROUND
Recent improvements in the areas of the Mission Bay development, SBC Ballpark, and Pier 48 include the China Basin Shoreline Park, the realignment of Terry Francois Boulevard and the construction of new office buildings and open spaces. These improvements, and the public boat launch parking lot, currently under construction at Pier 52/54, have created the need for a comprehensive parking management for the area.

This Print Covers Calendar Item No. 4A

The Port, working with its tenants, the City's Department of Parking and Traffic, and the Ballpark/Mission Bay Transportation Coordinating Committee, have jointly developed and agreed upon reasonable parking restrictions for the following areas: 1) Terry Francois Boulevard between Third Street and Illinois Street; 2) Mission Rock Street between Third Street and Terry Francois Boulevard; and 3) on the marginal wharf area adjacent to Pier 48.

PROPOSED PARKING RESTRICTIONS

Based upon the staff's planning efforts and discussions with tenants and community groups, the Port staff believes the following parking restrictions are reasonably necessary to manage vehicular parking in the area. Therefore, Port staff recommends adoption of these proposed changes to the Port's Harbor Code. These restrictions are illustrated on the attached diagram and summarized below.

Terry Francois Boulevard:

- *Third Street to Pier 48 (Generally)*
  - 2 hour maximum meter parking 7:00 a.m. to 7:00 p.m. everyday
  - No parking tow-away zone 2:00 a.m. to 6:00 a.m.
  - Tow-away, no stopping, from three hours before until three hours after Ballpark events. (Staff will post special signs indicating days and times of Ballpark events.)

- *Pier 48 to Mission Rock Street*
  - No Parking, tow-away zone, except for loading and unloading of passengers or freight. Section 22 of the existing Harbor Code allows the posting of signage and restrictions for areas designated for loading and unloading of passengers. Accordingly, Port staff plans to install signage designating this restriction for this portion of Terry Francois Boulevard.

- *Mission Rock Street to Illinois Street*
  - 2 hour maximum parking at spaces controlled by meters or areas designated by signage 7:00 a.m. to 10:00 p.m. everyday. (Parking meters will be installed in the future when development in Mission Bay occurs and Port staff, in coordination with all appropriate agencies, determines installation of meters is required.)
  - No parking, tow-away zone, 2:00 a.m. to 6:00 a.m.

Mission Rock Street:

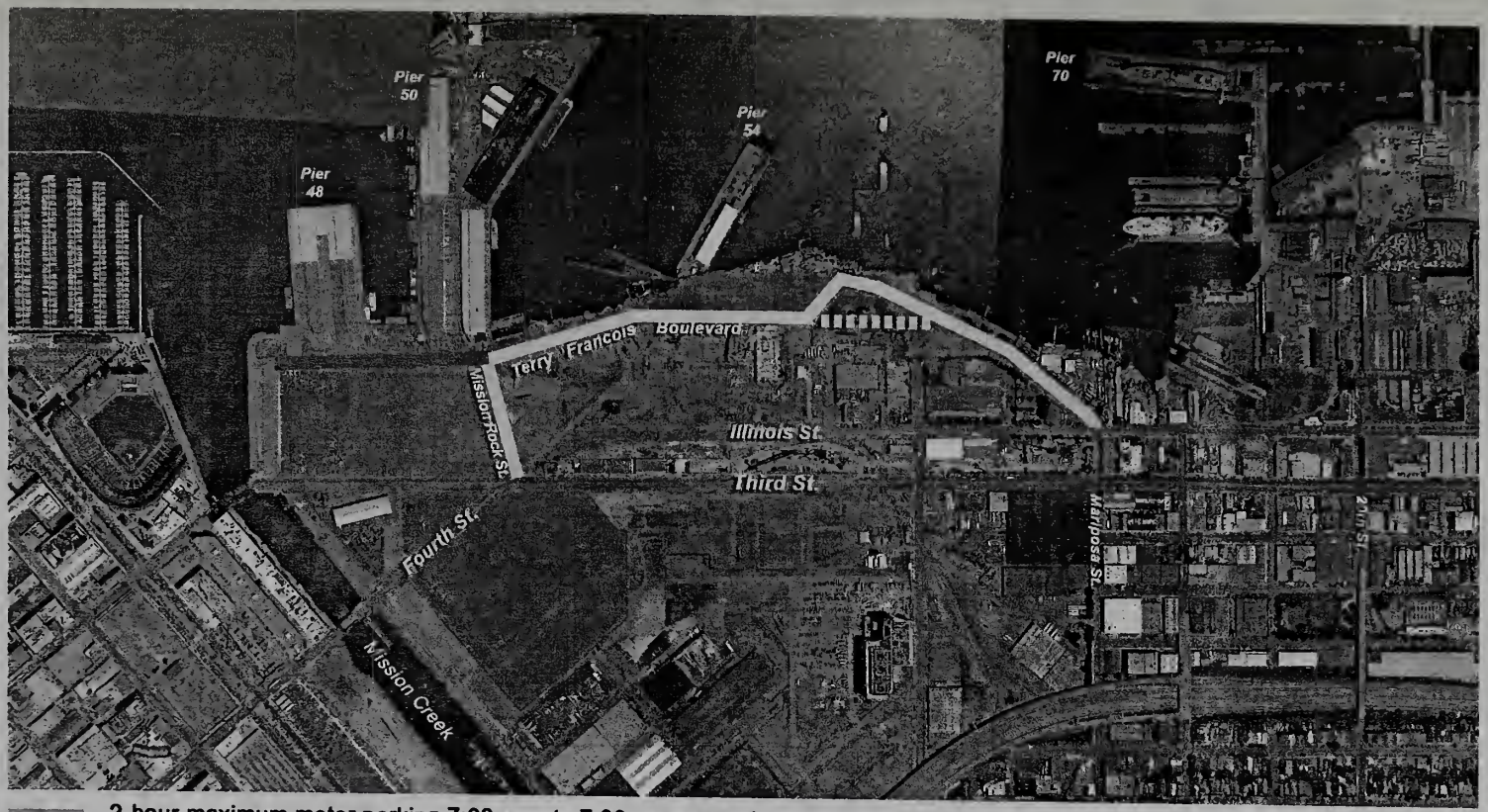
- *Third Street to Terry Francois Boulevard*
  - 2 hour maximum parking at spaces controlled by meters or designated by signage 7:00 a.m. to 10:00 p.m. (Parking meters will be installed in the future when development in Mission Bay occurs and Port staff, in coordination with all appropriate agencies, determines installation of meters is required.)
  - No parking, tow-away zone, 2:00 a.m. to 6:00 a.m.

Marginal Wharf adjacent to Pier 48:

- Staff will install eight parking meters, with a 2 hour maximum parking limit, effective 7:00 a.m. to 7:00 p.m. every day
- Tow-away, no stopping, from three hours before until three hours after Ballpark events. (Staff will post special signs indicating days and times of Ballpark events.)
- No parking, tow-away zone 2:00 a.m. to 6:00 a.m.

Port staff recommends that the Port Commission adopt the attached proposed resolution to amend the Harbor Code, and authorize staff to implement these new parking restrictions for the areas described above along Terry Francois Boulevard, Mission Rock Street, and adjacent to Pier 48.

Prepared by: David Beaupre, Waterfront Planner, Planning and Development



- 2-hour maximum meter parking 7:00 a.m. to 7:00 p.m. everyday
- No parking tow-away zone 2:00 a.m. to 6:00 a.m.
- Tow-away, no stopping, from three hours before until three hours after Ballpark events. (Staff will post special signs indicating days and times of Ballpark events.)

- No Parking, tow-away zone, except for loading and unloading of passengers or freight.

- 2 hour maximum parking at spaces controlled by meters or areas designated by signage 7:00 a.m. to 10:00 p.m. everyday. (Parking meters will be installed in the future when development in Mission Bay occurs and Port staff coordinating with all appropriate agencies determines installation of meters is required.)
- No parking, tow-away zone, 2:00 a.m. to 6:00 a.m.

HARBOR CODE AMENDMENT FOR PARKING RESTRICTIONS

Terry Francois Boulevard and Mission Rock Street

PORT OF SAN FRANCISCO

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-13

WHEREAS, the San Francisco Port Commission is charged with governing the properties within the Port's jurisdiction pursuant to the Charter of the City and County of San Francisco; and

WHEREAS, the Board of Supervisors formally delegated authority to the Port Commission to adopt a Harbor Traffic Code pursuant to City and County of San Francisco Ordinance Number 40-69; and

WHEREAS, the Port Commission has previously adopted such Harbor Code; and

WHEREAS, Article 3 of the Harbor Code establishes regulations with respect to compliance with signs, stopping, parking and use or occupation of curb space on property within the control and jurisdiction of the Port of San Francisco; and

WHEREAS, in view of increasing development and vehicular traffic along the waterfront, it is necessary to amend the Harbor Code rules and regulations with respect to parking restrictions within designated areas; and

WHEREAS, the Port Commission has determined that additional parking restrictions, including the installation of meters and signage are appropriate and necessary to effectively manage vehicular traffic and parking in the areas designated herein; now, therefore, be it

RESOLVED, that Article 3, Section 20.1, of the existing Harbor Code is hereby amended, and Sections 20.2 and 20.3 are hereby added to Article 3 of the Harbor Traffic Code as follows:

20.1. Parking Limited Areas Including Sunday, 7:00 a.m., to 7:00 p.m. On any day including Sunday and Holidays, except as provided in Section 31, it shall be unlawful for the driver of any vehicle to stop the same or park at metered spaces from 7:00 a.m. to 7:00 p.m. for a longer period of time than herein designated on any of the following areas:

(a) Two Hours. Along Jefferson Street commencing on Powell Street and extending to Hyde Street.

(b) Two Hours. Along Powell Street between The Embarcadero and Beach Street.

(c) Two Hours. On Beach Street between Powell Street and The Embarcadero.

(d) Two Hours. On west side of Grant Avenue between Beach Street and North Point Street.

(e) Two Hours. On North Point Street between Grant Avenue and The Embarcadero.

(f) Two Hours. On Kearny Street between The Embarcadero and Bay Street.

(g) Two Hours. On north side of Bay Street between Kearny Street and The Embarcadero.

(h) Two Hours. On Francisco Street between Kearny Street and Montgomery Street.

(i) Two Hours. On Montgomery Street between Francisco Street and Chestnut Street.

(j) Two Hours. On north side of Chestnut Street between Sansome Street and Montgomery Street.

(k) Two Hours. On east side of Sansome Street between Lombard Street and Chestnut Street.

(l) Two Hours. On Lombard Street between Sansome Street and The Embarcadero.

(m) Two Hours. On Battery Street between Greenwich Street and Lombard Street.

(n) Two Hours. On Front Street between Vallejo Street and Davis Street.

(o) Two Hours. On Vallejo Street between Front Street and Davis Street.

(p) Two Hours. On Davis Street between Broadway Street and Vallejo Street.

(q) Two Hours. On Broadway Street between Davis Street and The Embarcadero.

(r) Two Hours and Special Restrictions During Ballpark Events.: Along Terry Francois Boulevard from Third Street and extending to Pier 48, including 8 designated spaces on the Pier 48 wharf adjacent to Barry Bonds Junior Giants Field, it shall be unlawful for the driver of any vehicle to stop or park the same for more than two hours and it shall be

unlawful for the driver of any vehicle to stop or park the same between three hours before and three hours after any ballpark events at SBC Ballpark, as designated by appropriate signage maintained by the Port or designated agency along the boulevard.

(Amended by adding double underlined text and subsection (r) by Resolution No. 04-13, 02/10/04)

20.2. Parking Limited Including Sunday, 7:00 a.m. to 10:00 p.m.: On any day, including Sunday and Holidays, except as provided in Section 31, it shall be unlawful for the driver of any vehicle to stop or park the same at spaces controlled by meters or designated by signs from 7:00 a.m. to 10:00 p.m. for a longer period of time than herein designated at the following areas:

(a) Two Hours: Along Terry Francois Boulevard from Mission Rock Street and extending to Illinois Street;

(b) Two Hours: Along Mission Rock Street from Third Street and extending to Francois Boulevard. and furthermore it shall be unlawful for the driver of any vehicle to stop the same or park between three hours before and three hours after any ballpark events, as designated by on appropriate signage maintained by the Port or designated agency along the boulevard in the designated areas.

(Amended by adding double underlined section 20.2 and subsections (a) and (b) by Resolution No. 04-13, 02/10/04)

20.3. Parking Limited, Including Sunday, 2:00 a.m. to 6:00 a.m.: On any day, including Sunday and Holidays, except as provided in Section 31, it shall be unlawful for the driver of any vehicle to stop or park the same at spaces controlled by meters or designated by signs from 2:00 a.m. to 6:00 a.m. in any of the following areas:

(a) No Parking. Along Terry Francois Boulevard from Mission Rock Street and extending to Illinois Street.

(b) No Parking. Along Mission Rock Street from Third Street and extending to Terry Francois Boulevard..

(Amended by adding double underlined sections 20.3, with subsections (a) and (b) by Resolution No. 04-13, 02/10/04)

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 10, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

February 2, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Sue Bierman
Hon. Kimberly Brandon

FROM: Douglas F. Wong
Executive Director

SUBJECT: Authorization to accept and expend $450,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for the purpose of enhancing facility and operational security at the Port's cargo terminal at Pier 80.

DIRECTOR'S RECOMMENDATION: APPROVE RESOLUTION AUTHORIZING EXECUTIVE DIRECTOR TO ACCEPT AND EXPEND $450,000 IN GRANT FUNDS AWARDED TO THE PORT OF SAN FRANCISCO BY THE TRANSPORTATION SECURITY ADMINISTRATION FOR THE PURPOSE OF ENHANCING FACILITY AND OPERATIONAL SECURITY AT THE PORT'S CARGO TERMINAL AT PIER 80.

Background: Seaport security remains a priority on federal, state, and local levels. The Port of San Francisco, with its 7½ miles of diverse harbor facilities, provides critical maritime, commercial, and transportation services for both the City and County of San Francisco, and greater Bay Area region. The Port has unique security needs and responsibilities, and is a member of the Area Maritime Security Committee (AMSC), which assists the Coast Guard Captain of the Port in the effort to aide the security of San Francisco Bay Area ports and terminals and the Marine Transportation System (MTS).

Port Security Grant, Round 1: On February 28, 2002, Secretary of Transportation Norman Mineta announced the implementation of a new Port Security Grants Program, managed by the Transportation Security Administration (TSA), to finance security enhancements at critical national seaports. Under this program, the Port of San Francisco received a grant in the amount of $500,000 to conduct a comprehensive security vulnerability assessment of the Port's waterfront facilities.

Port Security Grant, Round 2: On January 14, 2003, the TSA announced a second round in the Port Security Grants Program. On February 27, 2003, the Port of San Francisco staff submitted a

This Print Covers Calendar Item No. 5A

grant application for funds to enhance security at the Port's cruise, ferry, and cargo facilities, located at Pier 35, the Downtown Ferry Terminal, and Pier 80. On June 12, 2003, Secretary of Homeland Security Tom Ridge announced that the Port of San Francisco qualified for a TSA Round 2 grant in the not-to-exceed amount of $3,475,000.

Port Security Grant, Round 3: On July 21, 2003, the TSA announced a third round in the Port Security Grants Program. The Port of San Francisco staff submitted a grant application for funds to enhance the Port's cargo and ferry facilities, located at Pier 80 and Pier 14 (ferry breakwater public access project). On December 10, 2003, Secretary Ridge announced that the Port of San Francisco qualified for a TSA Round 3 grant in the not-to-exceed amount of $450,000 for the Pier 80 project. The use of these grant funds will assist the Port of San Francisco in complying with security regulations mandated by the United States Coast Guard and improving security at the Port's cargo terminal at Pier 80. The intended scope of work includes access-control features such as a new guard station at the main gate, vehicular barricades and fences, improved lighting, and surveillance cameras. The application for the Pier 14 funding was not granted due to keen competition. TSA received a total of 1065 project applications totaling $987,282,230; the agency recommended funding for 442 projects in the amount of $179,025,900.

Port staff now seeks approval of the Port Commission to accept and expend $450,000 in funds from the Transportation Security Administration under its Port Security Grants Program, Round 3, for the purpose of enhancing facility and operational security at the Port's Pier 80 cargo facility as specified by the grants program.

Commission Action. Port staff recommends that the Port Commission authorize the Executive Director to accept and expend $450,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for the purpose of enhancing facility and operational security at the Port's cargo terminal at Pier 80; and further authorize the Executive Director to execute all agreements and documents necessary to secure the grant funds, in such form as approved by the City Attorney's Office.

Prepared by: Peter Dailey, Maritime Director

PORT COMMISSION
CITY & COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-12

WHEREAS, Seaport security remains a priority on federal, state, and local levels; and

WHEREAS, The Port of San Francisco, with its 7½ miles of diverse harbor facilities, provides critical maritime, commercial, and transportation services for both the City and County of San Francisco, and greater Bay Area region; and

WHEREAS, The Port of San Francisco is a member of the Area Maritime Security Committee (AMSC), which assists the Coast Guard Captain of the Port in the effort to aide the security of San Francisco Bay Area ports and terminals and the Marine Transportation System (MTS); and

WHEREAS, On February 28, 2002, Secretary of Transportation Norman Mineta announced the implementation of a new Port Security Grants Program, managed by the Transportation Security Administration (TSA), to finance security enhancements at critical national seaports; and

WHEREAS, Under this program, the Port of San Francisco was awarded a grant in the amount of $500,000 to conduct a comprehensive security vulnerability assessment of the Port's waterfront facilities; and

WHEREAS, On January 14, 2003, the TSA announced a second round in the Port Security Grants Program; and

WHEREAS, On June 12, 2003, the TSA awarded the Port of San Francisco a grant of $3,475,000 for second-round funds to enhance security measures at the Port's cruise, ferry, and cargo facilities, located at Pier 35, the Downtown Ferry Terminal, and Pier 80, respectively; and

WHEREAS, On July 21, 2003, the TSA announced a third round in the Port Security Grants Program, and the Port staff submitted a grant application for funds to enhance the Port's cargo and ferry facilities, located at Pier 80 and Pier 14 (ferry breakwater public access project); and

WHEREAS, On December 10, 2003, the Department of Homeland Secretary announced that the Port of San Francisco qualified for a TSA Round 3 grant in the not-to-exceed amount of $450,000 for the Pier 80 project, but the Pier 14 project was not funded; and

WHEREAS, The use of these grant funds will assist the Port of San Francisco in complying with security regulations mandated by the United States Coast Guard and improving security at the Port's cargo terminal at Pier 80; now, therefore be it

RESOLVED, That the San Francisco Port Commission does hereby authorize the Executive Director to accept and expend $450,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for the purpose of enhancing facility and operational security at the Port's cargo terminal at Pier 80; and, be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director to execute all agreements and documents necessary to secure such grant funds, in such form as is approved by the City Attorney's Office; and, be it further

RESOLVED, That the Executive Director shall seek the Board of Supervisor's approval of a Resolution to apply for, accept, and expend the $450,000 in grant funds from the Transportation Security Administration.

I hereby authorize that the foregoing resolution was adopted by the San Francisco Port Commission at its meeting of February 10, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

February 4, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Sue Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Summary of January 22-23, 2004 Cruise Terminal Environmental Advisory Committee (CTEAC) Workshop

DIRECTOR'S RECOMMENDATION: No action is required.

Background

The Port of San Francisco is developing the new James R. Herman International Cruise Terminal and Mixed Use Project at Piers 30-32. On March 25, 2003, as part of Final Supplemental EIR (FSEIR) process, the Port Commission adopted California Environmental Quality Act (CEQA) findings that discuss the significant environmental impacts of the Cruise Terminal project. The findings indicate that mitigation reduces some impacts to levels of insignificance and identifies other certain unavoidable significant environmental impacts. The findings included a Statement of Overriding Considerations that specific economic, legal, social, and other benefits outweigh the significant effects on the environment. The CEQA findings also included implementation of a Mitigation Monitoring and Reporting Program that includes, among other measures, establishment of air and water quality advisory groups to the Port Commission. The role of these advisory groups is to review potential additional mitigation measures that could potentially address the air and water impacts of cruise ship activity at the Port and to provide recommendations to the Port Commission. The additional mitigation measures recommended to the Port Commission then may be implemented if deemed feasible by the Commission. The areas of review include the use of technologies, such as shoreside power, and low sulfur content fuel to potentially reduce air emissions, and the use of new treatment technologies for ballast water and wastewater.

On June 11, 2003, the Port Commission adopted a resolution to establish the advisory groups within 90 days. By August, the Executive Director appointed members of the advisory groups and set up its first meeting in September. The advisory groups were collectively named the

This Print Covers Calendar Item No. **5B**

Cruise Terminal Environmental Advisory Committee (CTEAC). CTEAC is comprised of representatives from the cruise and maritime industries, regulatory agencies, organized labor, and neighborhood and environmental organizations (Attachment A). CTEAC meets on a regular basis, having met in September and November 2003. At the initial meeting, CTEAC members agreed that the air and water advisory groups would meet as one body and that agendas, meeting notes and other documents would be regularly posted on the Port web-site. At the November meeting, in order to provide all members with a common body of background information, CTEAC decided to hold a workshop to review the major issues regarding air and water quality and potential methods to reduce cruise ship impacts. In coordination with Bluewater Network, San Franciscans for a Healthy Waterfront, and Holland America Lines, Port staff organized a two-day workshop that was held on January 22-23, 2004 (Attachment B). Approximately 40 people attended the workshop.

On June 11, 2003, the Port Commission also resolved to prohibit cruise ships using Port facilities from discharging sewage, gray water, hazardous waste, solid waste, fuel or oil-related substances, or unauthorized ballast water into San Francisco Bay waters until such time as wastewater treatment methods and ballast water treatment methods are specifically authorized by state or federal agencies empowered by statute to make such authorization. These discharge prohibitions will be implemented via a new standard berthing agreement form to be developed by Port staff and approved by the Port Commission. The berthing agreement will require the cruise lines to (1) prohibit any unauthorized ballast water and wastewater discharges from their ships while in port until such time as ballast and wastewater treatment methods adequately meet federal or state statutes, and (2) report to the cruise terminal operator and the Port's Maritime Operations Manager all incidental or intentional discharges within San Francisco Bay. The berthing agreement will also state that failure to report any discharge within 24 hours may result in denial of future berthing at the Port of San Francisco.

The Port Commission actions preceded similar actions required of the Port as part of its BCDC permit conditions for the Cruise Terminal project. On November 6, 2003, the Bay Conservation and Development Commission (BCDC) approved a resolution pursuant to the Major Permit for the cruise terminal project. Issuance of the permit is conditioned on a number of items, including the following items being fulfilled:

1) By April 2005, the project sponsors (the Port and the developer) shall report to BCDC on the recommendations to reduce air emissions made by CTEAC and the Port Commission's determination as to the feasibility of implementing those recommendations. The recommendations should address "at a minimum, the feasibility of using lower emission fuels, cold-ironing (i.e., shoreside power hook-up), the prohibition of onboard incineration, and the identification, reservation, and incorporation of infrastructure within the project site for emerging technology."

2) The project sponsors shall include a berthing agreement requiring compliance with new state ballast water law (AB 433) and prohibits any treated or untreated wastewater discharges

into San Francisco. Also, by April 2005, the project sponsors shall report to BCDC on the CTEAC recommendation and Port Commission determination regarding the feasibility of shoreside treatment of wastewater.

General Overview of CTEAC Workshop

The January 22-23 CTEAC Workshop was structured such that the first day reviewed current cruise operations at Pier 35, the plans for the new terminal at Pier 30/32, how cruise ships typically operate, and the legal and regulatory environment that governs their operations. It was noted that cargo ships make up the vast majority of ships that enter San Francisco Bay. Nick Schowengerdt, Director of Environmental Compliance of Holland America Lines, noted that as compared to container ships, there is a relatively short operational life for cruise ships. Cruise ships are often retired before 20 years of service, as compared with cargo ships, which can be as old as 50 years. The resulting relatively high turnover of cruise ships means that the average age of the fleet is relatively young, and that new technologies are incorporated within the fleet fairly quickly. Thus, over time, air emissions and water discharge issues will be substantially reduced as new technologies become standard within the fleet.

Mr. Schowengerdt also indicated that cruise ships create most of their air emissions when they are full speed at sea. Cruise ships are primarily diesel/electric systems, where four or five diesel-type engines are used to drive generators to produce electricity. The electricity is then used to power all the ships systems, including its propulsion system. As a cruise ship approaches San Francisco Bay, the speed of the cruise ship is reduced, thereby reducing the electrical load, allowing one or more engines to be shut down which decrease the amount of air emissions. When berthed, the major electrical load that is required to maintain the HVAC (i.e., heating, ventilation and air conditioning) system onboard for as many 3,500 passengers who are either disembarking or embarking the cruise ship. When a ship is at berth (known as 'hoteling'), typically only one engine needs to be operated and the amount of air emissions is on the order of 10% of the emissions produced when a cruise ship is moving at full speed at sea.

For the conservative (i.e., worst case) evaluation of air impacts presented in the FSEIR, total cruise ship emissions were calculated to include the emissions produced by each round trip in and out of San Francisco Bay. For the purpose of this calculation, each round trip begins when a cruise ship reaches the San Francisco Buoy, approximately 12.5 miles west of the Golden Gate Bridge, and includes the trip to Pier 30/32, the time hoteling at the berth, and the trip back out the Golden Gate back to the San Francisco Buoy.

Wastewater

Wastewater refers to blackwater (sewage), graywater (effluent from sinks, baths, showers, laundry, and galleys), bilge water (oily residue from primarily propulsion equipment) and other liquid waste streams (e.g, deck runoff, photo labs, dry cleaning). Dr. Elizabeth Kim of U.S. Environmental Protection Agency (EPA) Headquarters (Washington, D.C.) stated that in

accordance with the Clean Water Act, cruise ships must use a marine sanitation device (MSD), approved by the Coast Guard, to treat blackwater. EPA establishes MSD performance standards, while the Coast Guard sets the rules for the design, construction, installation and operation of MSDs. The contents of a MSD holding tank may not be discharged in any U.S. navigable waters (i.e., bays and coastal waters within three miles of shore). While MSDs are initially tested and certified by the Coast Guard, there is no Federal regulatory requirement for periodic performance monitoring. The Coast Guard does not require foreign flag cruise ships to have a Coast Guard-approved MSD if their MSD is in compliance with International Maritime Organization (IMO) MARPOL Annex IX standards, which are generally similar to U.S. standards. Individual states are prohibited from regulating MSD design, manufacture, installation, or use.

In the last several years, the cruise industry has invested heavily in advanced wastewater systems (AWS), initially for use in Alaska. According to Dr. Kim, the new advanced systems (e.g., Zenon and Rochem systems) have so far shown excellent performance. (Note: The manufacturers of these systems claim that the effluent is near drinking water quality.) In addition, EPA has imposed a no-discharge zone (NDZ) for the Gulf of the Farralones and Cordell Bank marine sanctuaries. Under EPA regulations, individual States are allowed to establish an NDZ if EPA determines that there are adequate pump-out facilities within the NDZ.

Dr. Kim indicated that there are no current federal standards for graywater discharge from vessels, except in Alaska and the Great Lakes. For dischargers other than ships, both cruise and cargo, EPA regulations require a permit to discharge graywater under the National Pollutant Discharge Elimination System (NPDES) as established under the Clean Water Act. NPDES permits govern discharges to internal waters and coastal waters to three miles out from shore. The Clean Water Act specifically exempts from NPDES permitting any discharge of cruise ship sewage; effluent from properly functioning marine engines; laundry, shower and galley sink wastes; or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to garbage or other such materials dumped overboard. Individual States are not prohibited from regulating graywater discharges under their own State authorities outside of their Federally approved NPDES programs.

Bilge water is regulated by the Act to Prevent Pollution from Ships (APPS) and MARPOL Annex I. Oily mixtures and fuel oil tank ballast water is required to go through an oily water separator. The treated discharge must not contain more than 15 parts per million oil and must not cause a visible sheen on the water surface.

While in port in San Francisco, wastewater generally remains onboard. Catherine Hooper, Passenger Vessel Agent, ISS Marine Services, Inc., stated that Pier 35 and Piers 30-32 have intake pipes connected to the City's sewer system to receive wastewater, but only in rare occasions are the Pier 35 pipes used by cruise ships. Only one cruise ship in that last five years used the Pier 35 wastewater disposal pipes. However, visiting U.S. Navy vessels routinely use the system.

Mr. Schowengerdt states that Holland America ships typically treats blackwater and graywater using the onboard Zenon treatment system. Solid, non-hazardous waste is typically either recycled or disposed of through a shoreside vendor. Hazardous waste, such as dry cleaning fluids and photo solutions, are disposed of in compliance with hazardous waste laws through a shoreside vendor.

FSEIR Mitigation Measure D.1 prohibits BCDC requires a prohibition of any treated or untreated wastewater (blackwater, graywater, bilge water, etc.) discharges into San Francisco Bay. The 2004 Port berthing agreements will include language that prohibits such discharges into San Francisco Bay. In addition, the Port and the cruise terminal developer shall report to BCDC by April 2005 on recommendations of CTEAC to the Port Commission, regarding the feasibility of shoreside treatment of wastewater. Because there are no allowed or operational wastewater discharges into the Bay, Port staff preliminarily believes onboard wastewater treatment systems (such as the Zenon system) may be superior and more cost-effective than shoreside treatment of wastewater in San Francisco. However, Oceana believes that shoreside discharge is better than onboard systems. Whether a study of treatment and disposal options is warranted will be a topic of discussion for CTEAC. Options to be evaluated would include: (1) onboard treatment and disposal into City sewer system; (2) onboard treatment and storage for later disposal at sea, and (3) onboard treatment and disposal into San Francisco Bay (prohibited under BCDC permit conditions).

Ballast Water

Maurya Faulkner, State Lands Commission (SLC) Ballast Water Program Manager, reviewed how ballast water discharge is a means of transporting nonindigenous species, such as the Zebra Mussel and the Asian Clam, and how they can cause significant economic and environmental harm. Under State law, the SLC is the lead agency for the State's efforts to manage ballast water discharge. SLC reported that 96% of ships complied with mandatory management requirements, although there were operational violations. A new State ballast water law, AB 433, went into effect in January 2004, replacing and improving prior state law regulating ballast water discharge. The law seeks to eliminate the discharge of nonindigenous species into state waters, based on using best available practices and technologies that are also economically feasible.

FSEIR mitigation measure D.2 prohibits cruise ships from releasing ballast water discharge into San Francisco Bay, unless future treatment methods allows discharges that are authorized by State or Federal agencies. BCDC requires each berthing agreement a provision requiring compliance with AB 433 and the National Invasive Species Act, as they may be amended.

Shoreside Power

Tom Dow, Vice President of Public Affairs for Carnival Corporation (parent of Princess Cruises), and Bob Maddison of Project Marine described the Juneau shoreside power operation, which was constructed by Princess. This is the only operational shoreside power system for

cruise ships in the United States. The Juneau operation services only five or six Princess Sun-class cruise ships and is not used by any other cruise lines. Mr. Dow pointed out that the primary reason Princess undertook the shore-based power project was to reduce visible smoke emissions from cruise ships that could be clearly seen by the Juneau community. For different reasons, other West Coast ports, including Seattle, Los Angeles and Long Beach, are looking into the feasibility of shore-based power, primarily for container ship use. None of these proposed facilities are under construction or operational.

One large factor in the feasibility of shoreside power in San Francisco is the future availability of sufficient electric power capacity required to service the approximately 10 megawatt load requirement for each cruise ship (20 MW for two ships berthed simultaneously). Ed Smeloff of the City's Public Utilities Commission (SF PUC) acknowledged the difficulty of new building power plants in San Francisco. However, Mr. Smeloff stated that SF PUC's three-fold goal is to (1) close down Hunter's Point Power Plant, (2) construct four new peaker plants, and (3) construct a new PG&E transmission line up the peninsula. Although what he proposed may be controversial, this plan would reduce nitrogen oxides (NOx) produced within City boundaries by power plants by about 75% and result in an enhanced Citywide total power capacity of 1,133 megawatts. This would theoretically provide sufficient capacity to provide power to cruise ships.

Mr. Smeloff indicated that the source of the energy could be the Hetch Hetchy hydroelectric system and that the Raker Act allows Port tenants, in this case the new cruise terminal, to take advantage of this source. Further, Mr. Smeloff suggested that the cost of electricity might be comparable to other enterprise customers of PG&E, although this would need to be further investigated since the cruise season (Spring to Fall) coincides with the peak electricity demand of the City.

There are a number of shipboard concerns that relate to shoreside power usage. For example, in Juneau, Princess retrofitted their ships with electrical access hatches on the port side to accommodate a port-side hook-up. If the same Princess ships were to visit the new cruise terminal, there may be an operational difficulty since SFCT plans assume cruise ships may berth either starboard-side to or port-side to depending on tidal conditions.

There are a number of engineering issues to resolve in assessing the feasibility of shoreside power in San Francisco. The Juneau facility demonstrates that shoreside power can work under the right set of circumstances. In fact, in San Francisco, the MARAD ships typically use shoreside power at berth in San Francisco, although their power and operational requirements are much less stringent than those of cruise ships. Workshop participants indicated that a shoreside power system would require a new substation (roughly 20 ft by 40 ft in size) which may conflict with the current schematic design of the James R. Herman cruise terminal. A new transmission line to the substation would also be required. No cost estimates were provided for this infrastructure at the workshop. Previously, Port staff had received estimates of substation costs that ranged between $2 million and $20 million, depending upon voltage and power requirements.

One concern is that Princess, the only cruise line that currently has any ships fitted for shoreside power, would be the only cruise line in the foreseeable future to use shoreside power at the James R. Herman cruise terminal. The cost to retrofit each Princess ship was approximately $500,000; Princess has retrofitted five ships. For 2004, there will be six Princess ships visiting San Francisco. Of these, only one ship has been retrofitted and this ship is scheduled to visit San Francisco twice. This represents 2% of the approximately 100 ship calls to San Francisco in 2004.

Mr. Dow indicated that Princess is now talking to the Port of Seattle about what would be required to enable the existing fleet of retrofitted ships to potentially use shore-based power if it is developed there. It is conceivable that the same ships that travel to Seattle and Juneau could visit San Francisco and hook-up to a shore-based system here. However, this would only represent a small percentage of cruise ships that would visit San Francisco. The Port currently serves 14 different cruise lines, and 25 different cruise ships of numerous designs.

The issues to be evaluated in a comprehensive feasibility analysis of shoreside power in San Francisco would include, at a minimum, shoreside operational issues, shipboard operational issues, the availability of sufficient power, the shoreside construction costs, costs of shipboard modifications, the relatively few ships currently able to use such a facility, and a quantitative estimate of the air emission reductions that might result. CARB has compiled cost/benefit data for a number of source reduction projects. Completion of a cost/benefit analysis of shoreside power and a comparison to CARB projects would provide a quantitative method for evaluating the utility of this potential mitigation.

Port staff believes it may be necessary to evaluate these issues in a formal technical and financial feasibility study, in order to enable the Port Commission (and BCDC) to fully weigh public policy alternatives.

Low Sulfur Fuels

Several grades of marine fuels exist in the marketplace. These fuels traditionally have been defined by a number of physical parameters, such as density and viscosity. The different grades also vary in their content of sulfur, due to both the original source of the petroleum used for the fuel and the refinery processes used in making the fuel. It is important to remember in discussions of "low sulfur fuel" that there are low sulfur varieties of each of several grades of marine and on-road fuels.

In general, substituting a low sulfur variety of a fuel will reduce air pollution created when that fuel is burned, primarily reducing sulfur dioxide (SOx), but often also resulting in a reduction of particulates (PM_{10}, $PM_{2.5}$) and nitrogen oxides (NOx). Paul Milkey of the California Air Board presented information indicating that substitution of low-sulfur bunker fuel for standard bunker fuel would result in SOx reduction of 44% and PM reductions of 18%. Even further reductions

could be obtained by substitution of "marine gas oil" (MGO) fuel for standard bunker fuel. This would result in SOx reduction of approximately 90% and PM reductions of approximately 60%. Low sulfur fuels do cost significantly more, however, so there are direct costs involved.

However, substituting fuels onboard cruise ships is not always a straightforward matter. Marine diesel engines are designed for heavy marine fuels (bunker) and cannot always be modified to run on lighter fuels (e.g., MGO or on-road diesel). Switching back and forth among fuels may be even more problematic if physical modifications to the engines are required. Additionally, safety and insurance issues may preclude changes in fuel types, as they did when cruise lines, in voluntary agreement with the Port of Seattle, attempted to use different fuels while in port.

Nick Schowengerdt indicated that changing fuel types within an onboard fuel tank must be done with care. Some varieties of fuel can be immiscible with each other (like oil and vinegar) and tend to remain separated, even though stored in the same tank. While modern cruise ships have several fuel tanks onboard, they typically do not have separate fuel lines that would allow different types of fuels to be stored onboard and used at different times.

There is also an issue with the availability of low sulfur fuel in the Bay area. Richard Clarke of World Fuel Services, Inc. stated that there is a total demand of one million tons a year for marine fuel in the Bay Area. Of that, the cruise industry's demand is only 60,000 tons, or 6% of the total. The local supply of marine fuel is dominated by Chevron, which provides about 85-95% of the marine fuel supply. Since the market share that cruise lines use locally is relatively minor, suppliers are not necessarily responsive to cruise line demand for different fuel types. Therefore, while low sulfur content fuel is theoretically available from various sources, it may not be locally available to cruise lines due to relatively low demand and the high cost of storing the low sulfur fuel for cruise ship use only. Put differently, Chevron and others might be more responsive if there was a demand greater than that of cruise ships alone for low sulfur fuel in the Bay Area.

The California Air Resources Board (CARB) currently is sponsoring periodic meetings of a Maritime Air Quality Technical Working Group that is looking at ways to reduce air emissions from the maritime industry in general. It is likely that CARB will support U.S. EPA efforts to declare both the East and West Coasts of the United States to be "Sulfur Emissions Control Area" (SECAs) under IMO MARPOL Annex VI regulations. A SECA designation for the West Coast would require that all marine fuels sold on the West Coast meet low-sulfur requirements. Additionally, CARB may already have sufficient regulatory authority to require the sale of low sulfur fuels only.

Bluewater Network will be working with Assemblyman Joe Simitian to re-introduce AB471, cruise ship-related legislation that will require, among other things, the use of low sulfur fuel by all cruise ships within 25 miles of the California coast. While this bill may reduce cruise ship emissions, Port staff believes that the bill would be more effective in reducing overall air pollution if it mirrored the SECA designation and included cargo ships as well, because these ships represent the vast majority of ships entering San Francisco Bay.

Emerging Engine Technologies

Tapio Markkula gave an in-depth presentation regarding Wärtsilä, the major manufacturer of cruise ship engines. Wärtsilä has made major strides in reducing the emissions from cruise ship engines over the last several years. Mr. Markkula provided details only a mechanical engineer could love, but concluded that today's marine engines can be produced that have NOx emissions only one-fifth of those of engines produced just 15 years ago. Engine technology is likely to improve further. As older cruise ships are replaced by newer ones in the ongoing turnover of the cruise fleet, the fleet average emissions will be reduced.

Conclusions

The sense of CTEAC members, invited presenters, and the general public was that the workshop was informative, comprehensive, and an overall success. This was expressed to Port staff by a number of attendees, both verbally and by letter (Attachment C).

CTEAC agreed that at its next meeting, to be held February 25, Port staff would present its draft 2004 berthing agreements regarding the prohibition of ballast water and wastewater discharges into the Bay to CTEAC for its review.

In addition, CTEAC will likely urge the Port to set a priority in initiating a study of the feasibility of shore-based power in the current year budget. This study would be conducted by a consultant, reviewed by CTEAC and a recommendation presented to the Port Commission. In compliance with the BCDC permit requirements, this study and determination of its feasibility by the Port Commission would be presented to BCDC for their review. SFCT, the Cruise Terminal developer, would initially fund this study as they are required to provide $50,000 as a condition to close escrow next month for the initial phase (Condo Tower) of the Cruise Terminal project.

Prepared by: Jay Ach
Environmental Manager
Engineering & Maintenance Division

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Attachments

ATTACHMENT A

FINAL
Workshop Agenda

Cruise Operations and Environmental Issues

Bayside Conference Room
Port of San Francisco, Pier 1
January 22 & 23, 2004

Hosted by Port of San Francisco
Cruise Terminal Environmental Advisory Committee (CTEAC)

DAY 1 - Thursday January 22

1. INTRODUCTION

   - **Purpose & Goals of Workshop** - *Harry Seraydarian* **9:00-9:10**

2. OPERATIONAL OVERVIEW

   - **Port Cruise Operations** **9:10-10:10**

     Present operations at Pier 35 - *Peter Dailey, Port of San Francisco*

     Future development at Pier 30/32 - *Maurice Cococcia, SF Cruise Terminal, LLP*

     Review of impacts and mitigations as identified in EIR and BCDC permit - *John Doll, Port of San Francisco*

   - **BREAK** --- --- --- --- --- --- --- --- **10:10-10:20**

   - **How a Cruise Ship Works - Overview of Systems:** **10:20-11:20**
     Nick Schowengerdt, Holland America Lines

     Propulsion systems

     Electrical systems

     Waste systems

     Navigational constraints and "rules of the road"

     What happens onboard as a cruise ship comes into or leaves a berth

- **What happens while a cruise ship is at berth?** **11:20-12:00**

  Passenger transfer - *Catherine Hooper, ISS Marine Services; Henry Thaxton, Metropolitan Stevadores*

  Fueling operations - *Catherine Hooper / Henry Thaxton*

  Supply operations - *Catherine Hooper / Henry Thaxton*

  Waste management - *Catherine Hooper / Henry Thaxton*

LUNCH BREAK --- --- --- --- --- --- --- --- **12:00-12:20**

3. **LAWS AND REGULATIONS REGARDING WATER QUALITY:**

   - **Overview of Laws and Regulations pertaining to water quality and waste discharge**

     Federal and international regulations on water that apply (or don't apply) to cruise ships - *Elizabeth Kim, EPA Headquarters* **12:20-12:50**

     Coast Guard Mission and USCG/EPA relationship re maritime environmental laws - *Lt. Julie Mitchell, US Coast Guard* **12:50-1:10**

     Overview of ballast water laws - *Mauyra Falkner, California State Lands Commission* **1:10-1:40**

     San Francisco Bay water quality regulations - *Wil Bruhns, SFBay Reg. Water Quality Control Board* **1:40-2:00**

   - **Gaps or Overlaps in Jurisdiction** - Moderated Panel Discussion w/ questions/comments from all attendees *(H. Seraydarian, Moderator)* **2:00-2:20**

   - **BREAK** --- --- --- --- --- --- --- --- **2:20-2:35**

4. **LAWS AND REGULATIONS REGARDING AIR QUALITY:**

   - **Overview of Laws and Regulations pertaining to air quality**

     Federal and international regulations on air quality that apply (or don't apply) to cruise ships - *Roxanne Johnson, EPA Region IX* **2:35-3:05**

     State Laws, Regulations, and Programs - *Paul Milkey, California Air Resources Board* **3:05-3:35**

     Local/Regional Laws, Regulations, and Programs - *Michael Murphy, Bay Area Air Quality Management District* **3:35-4:05**

   - **Gaps or Overlaps in Jurisdiction** - Moderated Panel Discussion w/ questions/comments from all attendees *(H. Seraydarian, Moderator)* **4:05-4:25** END OF DAY 1

Cruise Operations and Environmental Issues

DAY 2 - Friday January 23

5. DAY TWO KICKOFF - HARRY SERAYDARIAN **9:00-9:05**

6. SHORESIDE POWER

- **Electrical Infrastructure and Power Availability in SF -** *Ed Smeloff, SF Public Utilities Commission* **9:05-9:25**
- **Introduction: What it is/Why it is desirable** - *Teri Shore, Bluewater Network* **9:25-9:35**
- **Shoreside Power in Juneau** - *Bob Maddison, Project Marine* **9:35-10:05**
- **Operational experience with the Juneau Shoreside Facility -** *Tom Dow, Princess Cruises* **10:05-10:25**
- **BREAK** --- --- --- --- --- --- --- --- **10:25-10:40**

7. FUEL-RELATED ISSUES

- **Types of fuels and fuel availability** - *Richard Clark, World Fuel Services, Inc.* **10:40-11:20**
- **Fuel type/air pollution relationships** - *Paul Milkey, California Air Resources Board* **11:20-10:40**
- **Improving engine technologies -** *Tapio Markkula, Wärtsilä Corp.* **11:40-12:00**

LUNCH BREAK --- --- --- --- --- --- --- --- **12:00-12:20**

8. ENVIRONMENTAL PERSPECTIVE ON AIR AND WATER:

- **Bluewater Network** **12:20-12:50**
  Teri Shore, Bluewater Network
  Tim Eichenberg, Oceana
- **San Franciscans for a Healthy Waterfront** **12:50-1:20**
  El St. John, San Franciscans for a Healthy Waterfront
  Ray Kapahi, Air Permitting Specialists, Inc.
  Mark Jacobson, Stanford University

9. CRUISE INDUSTRY PRACTICES ON AIR AND WATER:

- **Air** - *Tom Dow, Princess Cruises* **1:20-1:50**
- **Water** - *Nick Schowengerdt, Holland America Lines* **1:50-2:20**

10. WHERE DO WE GO FROM HERE?

- **Facilitated Discussion** - ***Harry Seraydarian to lead*** **2:20-3:05**

END OF DAY 2

Notes: (1) Individuals or organizations listed as speakers for each topic are suggestions from the Workshop Subcommittee. Organizations and individuals, may change due to availability and other factors beyond the control of CTEAC or the Port.

(2) **Coffee and other beverages will be provided** each morning prior to the start of the workshop and at breaks. Buffet-style **lunch will be provided** by the Port both days to those who RSVP.

Cruise Terminal Environmental Advisory Group (CTEAC)
(Air & Water Quality Advisory Groups)

ATTACHMENT B

1.
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Cruise Terminal Environmental Advisory Group (CTEAC)
(Air & Water Quality Advisory Groups)

20.
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21.
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January 30, 2004

ATTACHMENT C

Peter Dailey
Director, Maritime
Port of San Francisco
Pier 1, The Embarcadero
San Francisco, CA 94111

Dear Peter,

Bluewater Network would like to thank the Port of San Francisco for your efforts in organizing the two-day cruise ship workshop on Jan. 22 and 23, sponsored by the Cruise Ship Terminal Environmental Advisory Committee. We believe that it was an excellent and productive meeting that will forward the port's and city's goals of reducing or preventing pollution from cruise ships, as spelled out in port policy, supervisors' recommendations and environmental documents.

Port staff, specifically Jay Ach, were collaborative and responsive in setting the agenda and following-up with the experts who were invited to participate. John Doll was also very helpful and Adrianna Souza did a terrific job managing the distribution of information to the CTEAC and participants. We know there were others behind the scenes working to coordinate the event and provide lunch and refreshments, which was very much appreciated.

As you know, Bluewater Network provided recommendations for the agenda as part of the workshop subcommittee, and all of our recommendations were accommodated. We can all feel fortunate that we were able to secure experts in cruise ship operations, terminal operations, air and water regulations, marine engineering, city energy capabilities, and other pertinent topics.

We look forward to working with the port in implementing the action items that were identified during the workshop, such as determining the priorities and scope of work for studies on air and water quality measures at our next meeting, and implementing the 2004 berthing agreement conditions.

Thanks again for your assistance and support. It was a pleasure working with the port.

Sincerely yours,

Teri Shore
Clean Vessels Campaign Director

Cc: Supervisor Gerardo Sandoval
San Francisco Board of Supervisors
Port of San Francisco Commissioners
Bay Conservation and Development Commissioners

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PORT OF SAN FRANCISCO

MEMORANDUM

February 3, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Susan Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Capital Projects for Fiscal Year 2004/05.

DIRECTOR'S RECOMMENDATION: Approve Resolution for Adoption and Approval of Capital Projects for Fiscal Year 2004/05

Attached is the Fiscal Year 2004/05 Capital Plan for review and approval by the Port Commission. In accordance with the City's budget instructions, project description and project goals outlined in the Plan were previously provided to the Mayor's Office.

The Plan provides Port funding in the amount of $10,680,257 for capital projects. The 2004/05 Capital Plan will be funded out of the Port's unappropriated operating fund balance. After the funding of the 2004/05 Capital Plan, the Port will retain an operating reserve of $11.6 million.

This Print Covers Calendar Item No. **6A**

Port staff proposes to use the $10,680,257 in available funding for the following projects:

Project	2004-05 Capital Plan Funding	Previous CP or Other Funding	Unfunded Amount	Total Project Cost
Fisherman's Wharf:				
Fisherman's Wharf J-10 – Additional Funding	300,000	763,500		1,063,500
Pier 35 Substructure Repairs	250,000	0	4,450,000	4,700,000
Pier 35 Life Safety & Other Improvements	137,000	0	442,000	579,000
South Beach				
Embarcadero Promenade Railing — Additional Funding	70,000	283,000		353,000
Southern Waterfront:				
Illinois St. Bridge — Additional Funding	2,320,125	14,800,516	2,680,000	19,800,641
Illinois St. Bridge Public Access Improvements	1,260,955	0	1,489,045	2,750,000
Portwide Projects:				
Dredge Testing – FY 2004/05 program	465,000	0	0	465,000
Maintenance Dredging – FY 2004/05 program	2,600,000	0	0	2,600,000
Special Area Plan – FY 2004/05	2,226,667	5,291,656	0	7,518,323
Pier Repair Project – Additional Funding	800,000	4,300,000		5,100,000
Utilities Project – Additional Funding	75,000	200,000		275,000
Fire Sprinkler Project – Additional Funding	75,000	300,000		375,000
ADA Transition Plan – Additional Funding	100,510	463,451	492,725	1,056,686
Total Funded Projects	$10,680,257	$26,402,123	$9,553,770	$46,636,150

Staff also recommends the inclusion of the following projects in the 2004/05 Capital Plan as unfunded:

Project	Project Cost
Fisherman's Wharf:	
Blue Shed Building Superstructure Repair & Improvement	100,000
Northeast Waterfront:	
Pier 33 Electrical Service Repair	100,000
Ferry Building Area:	
Ferry Building Talking Signs Project – Phase II	64,500
Portwide Projects:	
Port of SF Permit Records Archival Project	400,000
Utility Drawings Digitization Project	50,000
Total Unfunded Projects	$714,500

The 2004/05 Capital Plan will be submitted to the Mayor and the Board of Supervisors for approval. Based on the Port's available funds and the need for capital projects as identified by staff, Port staff requests that the Commission approve the Fiscal Year 2004/05 Capital Plan as developed and proposed by staff. Capital projects which have been approved, but not funded, will be brought before the Port Commission for funding authorization, should funding become available.

Prepared By: Lawrence Brown, Financial Analyst

FY 2004/05 CAPITAL PLAN PROJECTS

Project Name	Amount	Description	Goal/Explanation
Fisherman's Wharf J-10 — Additional Funding	$300,000	The Fisherman's Wharf J-10 project was established to fund the possible removal of the J-10 wharf and the restoration of the rip-rap covered embankment at the site. The scope of work needed to complete the project has expanded beyond what was anticipated at the time of the original project approval, and therefore, additional funding is needed to complete the project. These additional tasks include: (i) preparation of the Environment Impact Report; (ii) installation of barricades and fencing to prevent unauthorized entry, and protect public health and safety; (iii) additional, unanticipated engineering costs. This project would provide $300,000 in additional funding necessary to complete this project.	The J-10 wharf is currently unsafe and is in danger of collapse. The goal of this project would be to improve safety and to create a safe and stable earth embankment at this location.
Pier 35 Substructure Repairs	$250,000	The substructure of Pier 35 is in a deteriorated condition and in need of repair. This project would fund Phase I of a multi-phase major rehabilitation of the substructure of Pier 35 including work with pre-cast and jacketed timber piles. Phase I will fund architectural and engineering services needed to identify and to provide detailed cost estimates for long-term repairs. Funding will also be available for temporary shoring as needed	Pier 35 is the Port's cruise terminal facility, and a major repair and rehabilitation of the substructure will need to be completed over the next several years in order to ensure the continued safe use of the facility over the long term. A new cruise terminal is being developed for the Port at Piers 30/32. However even after it opens in 2009, Pier 35 will still be needed: (i) to handle cruise overflow traffic; (ii) as a back-up cruise facility; and (iii) other Port maritime needs.
Pier 35 Life Safety and Other Improvements	$137,000	This project will fund work to correct non-code compliant egress and life safety issues at Pier 35, the Port's cruise terminal facility. The project will also provide funding for various security related items which may not be covered by a Transportation Security Agency (TSA) grant which the Port recently received. Funding is also provided for the purchase of furniture for the cruise terminal lobby.	The goal of this project is to bring the Pier 35 facility into health and life-safety code compliance. This project will also provide funding for needed security-related items which are not covered under a TSA grant which the Port received. Currently there is no furniture in the Port's cruise terminal lobby; therefore, another goal of this project is to provide a small about of furniture and seating for this area.

FY 2004/05 CAPITAL PLAN PROJECTS (cont)

Project Name	Amount	Description	Goal/Explanation
Embarcadero Promenade Railing — Additional Funding	$70,000	In FY 2000/01 $57,000 was appropriated for the construction of a wall and fence with a decorative railing along 450 feet of The Embarcadero Promenade between Folsom and Harrison streets. The wall will replace a four foot high concrete wall and chain link fence which is currently in place. Total funding for this project consists of a $226,000 San Francisco Transportation Enhancement Activities grant, and Port matching funds of $57,000. When the project was put out to bid the lowest responsive bid received was $349,480. This project will provide $70,000 in additional funding needed to complete the project.	The goal of this project is to provide the additional funding needed to complete the Embarcadero promenade railing project. The railing will replace the existing wall and fence with a decorative railing as used elsewhere along the Promenade. The new railing would improve the attractiveness of the Promenade near Pier 24 Annex and the proposed Rincon Park Restaurant thus enhancing the outdoor dining potential. This, in turn, could increase the revenue generating potential at each site. Replacing the chain link fence will also create a more permanent and secure separation between pedestrians and the water.
Illinois Street Bridge — Additional Funding	$2,320,125	The Illinois Street Bridge project was established to fund the construction of an inter-modal (rail and truck) bridge across the Islais Creek Channel, including approaches and related improvements. The project is currently funded with a combination of Port funds, State transportation improvement grant funds, transportation impact fees, and monies from the developer of the Mission Bay project. There is currently a funding shortfall due to a significant design change to a moveable span bridge, and permit-required mitigation measures. This project will provide the additional funding necessary to finance: (i) construction of the bridge span, (ii) construction of a rail link to Pier 80, (iii) design and engineering services, construction management, design review costs, and permitting.	The bridge will provide direct rail and truck connections between Pier 80 and Piers 94/96 along the Illinois Street right of way. The bridge is needed to maintain rail service to the Port's maritime terminals as the Mission Bay project has eliminated rail connection between Pier 80, 48, and 50 and the main line effective January 1, 2003. Without freight rail access Pier 80 cannot be marketed to potential customers as a fully functional maritime facility. The bridge will also serve to relieve traffic congestion along Third Street by providing an alternate route for truck traffic servicing Port facilities, and the Backlands area.
Illinois Street Bridge Public Access	$1,260,955	This project will fund construction of public access improvements related to the Illinois Street Bridge. Improvements to be provided include construction of bicycle and pedestrian access up to and on the bridge, and design and re-construction of Tulare Park and related landscape improvements. Phase 1 funding is provided for the construction of bicycle and pedestrian paths on the bridge span, and the construction of bridge elements necessary to support the paths.	This project will provide the public access improvements necessary to satisfy conditions of a Bay Conservation and Development Commission (BCDC) permit required before construction of the Illinois Street Bridge can proceed. The project also satisfies the Port's goal of providing public access.

FY 2004/05 CAPITAL PLAN PROJECTS (cont)

Project Name	Amount	Description	Goal/Explanation
Dredge Materials Testing — FY 2004/05	$465,000	This project will fund testing of sediments to be dredged for chemical and biological contaminants. This project supports the Port's dredging activities planned for FY 2004/05.	Environmental regulations require chemical and biological testing of the sediments in any area to be dredged in order to determine the amount (if any) of contaminates in the soil. Results of the testing are used to determine the proper disposal site for the dredged material. Dredge testing is required for the Port's dredging activities.
Maintenance Dredging — FY 2004/05	$2,600,000	This project will fund the Port's dredging activities for FY 2004/05. More specifically, the project will fund scheduled dredging at Pier 35, Pier 80, Pier 92, and Fisherman's Wharf.	Maintenance dredging is a necessary component of the continued operation of Port maritime facilities. Dredging keeps the Port's berths and channels at navigable depths, including sites where the Port has contractual obligations with shipping lines and operators.
Special Area Plan — FY 2004/05	$2,226,667	This project will fund the Port's FY 2004/05 contribution to the San Francisco Waterfront Special Area Plan, a plan which requires to Port to undertake various public access improvements along a portion of the San Francisco waterfront.	Under terms of the San Francisco Waterfront Special Area Plan, an agreement between the San Francisco Bay Conservation and Development Commission, the Port is required to provide financing for various public access improvements. This project will fund the Port's FY 2004/05 contribution.
Pier Repair Project Additional Funding	$800,000	This project funds the engineering, permitting, inspection, and repair or improvements to the deteriorated pier structures. $4,300,000 was appropriated for this project in FY's 2001/02, and 2003/04; almost all of which has been committed for specific pier repair projects. The following additional facilities have been identified which now require repair: Piers 43, 38, 70, Wharf J-11, and the Hyde Street fuel dock. This project also funds as needed pile workers, and equipment needed to facilitate the pier repairs.	The goal of this project is to address deferred maintenance of the Port's pier structures in order to provide for: (i) the continued safe operation of Port pier structures, and the buildings which they support; (ii) the preservation of the Port's lease revenues; and (iii) the extension of the economic life of the Port's pier assets.

FY 2004/05 CAPITAL PLAN PROJECTS (cont)

Project Name	Amount	Description	Goal/Explanation
Utilities Project — Additional Funding	$75,000	This project provides funding for necessary utility repair and capacity related improvements to the utility infrastructure servicing various Port facilities. Utilities include electric power, lighting, telephone, gas HVAC, water, electronic security, sewer and drainage service. The following additional facilities have been identified which are in need of repairs and/or improvements: Piers 26, 33, 48, and 50 and Fisherman's Wharf.	Making needed repairs to the utility infrastructure will ensure continuous utility service Port tenants, and extend the economic life of the Port's facilities. Additionally, many of the Port's pier sheds have utility infrastructure that is only adequate for warehouse use. The Port's ability to rent space is often hampered by the need for additional utility capacity. Increasing capacity where necessary will allow the Port to maximize the rental income from its facilities.
Fire Sprinkler Project — Additional Funding	$75,000	This project funds the replacement of deteriorated plumbing and fire sprinkler heads, and make other needed repairs to fire and alarm systems at various Port facilities. The following additional facilities have been identified which need repairs to their fire protection systems: Piers 48, 80, and 96.	This project will ensure that the Port's fire and alarm systems are in good operating order, as these systems are essential for life safety and the protection of property.
ADA Transition Plan — Additional Funding	$100,510	The Port's ADA transition plan project provides funding to make physical improvements to the Port's public facilities to make them accessible to the disabled. The Port has identified the following improvements needed to make its facilities more accessible: (i) repairs to sidewalks at Jefferson Street and Terry Francois, (ii) improvements and repairs to decking at Pier 7, (iii) installation of accessible sinks at various Port locations along the waterfront, (iv) accessibility improvements to the Agriculture Building, (v) accessibility repairs and improvements to public toilets on Port property, (vii) improvement at Herons Head Park, (viii) an accessible street parking master plan and improvements at various sites on Port property. The additional funding will provide monies for this work. The project will also provide funding for other accessibility repairs and improvements as needed.	The Port is committed to providing access to its public facilities to all members of the public. The goal of this project is to provide funding to make physical improvements to its public facilities to make them accessible to the disabled.

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-14

WHEREAS, The Port has $10,680,257 in the Operating Fund; and

WHEREAS, The next priorities identified in the Capital Plan are:

- Fisherman's Wharf J-10 — Additional Funding
- Pier 35 Substructure Repairs
- Pier 35 Life Safety and Other Improvements
- Embarcadero Promenade Railing — Additional Funding
- Illinois Street Bridge — Additional Funding
- Illinois Street Bridge — Public Access Improvements
- Dredge Materials Testing — FY 2004/05 Program
- Maintenance Dredging — FY 2004/05 Program
- Special Area Plan — FY 2004/05 Contribution
- Pier Repair Project — Additional Funding
- Utilities Project — Additional Funding
- Fire Sprinkler Project — Additional Funding
- ADA Transition Plan — Additional Funding

WHEREAS, Port staff has identified these capital projects as priority areas which warrant allocation of funding; now therefore be it

RESOLVED, That the Port Commission authorizes the funding of $10,680,257 to fund these projects which have been designated as having the highest priority; and, be it further

RESOLVED, That the Executive Director is hereby authorized to cancel or postpone any funded project due to unforeseen future events or circumstances which may arise after approval of the 2004/05 Capital Plan; and, be it further

RESOLVED, That projects included in the 2004/05 Capital Plan that have been approved, but not funded, will be brought before the Port Commission for funding authorization, should funding become available; and, be it further

RESOLVED, That the Port Commission approves the 2004/05 Capital Plan as developed by staff and attached to the staff report dated February 3, 2004, accompanying this resolution; and, be it further

RESOLVED, That staff is directed to submit the 2004/05 Capital plan to the Mayor and Board of Supervisors for approval.

I hereby certify the foregoing resolution was adopted by the Port Commission at its meeting of February 10, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

February 4, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Sue Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Fiscal Year 04/05 Operating Budget

DIRECTOR'S RECOMMENDATION: Approve Annual Operating Budget for Fiscal Year 04/05

The purpose of this item is to request Commission approval of the proposed Fiscal Year 04/05 operating budget. Following Commission approval, the budget will then be reviewed by the Mayor's Office, which will submit the budget to the Board of Supervisors by the first week of May 2004. The Board will give final consideration to the budget on or about July 31, 2004.

The proposed Fiscal Year 04/05 Operating Budget is summarized as follows:

	FY 03/04	FY 04/05	Increase/ (Decrease)	Percent
Revenue	$51,825,565	$52,235,300	$409,735	0.0%
Expense	51,825,565	52,234,850	$409,285	0.0%
Surplus/(Deficit)	$0	$ 450	$ 450	0.0%

THIS PRINT COVERS CALENDAR ITEM NO. **6B**

Revenue

The proposed revenue budget of $52.2 million for FY 04/05 reflects a $0.4 million increase or 1% higher than the FY 03/04 budget. Projected revenues for FY 04/05 are as follows:

	FY 03/04	FY 04/05	Increase/ (Decrease)	Percent
Cargo	$3,943,000	$4,145,000	$202,000	5%
Ship Repair	700,000	850,000	150,000	21%
Harbor Services	977,000	1,010,000	33,000	3%
Cruise	1,173,000	1,221,500	48,500	4%
Fishing	1,405,000	1,446,000	41,000	3%
Other Marine	1,186,000	1,097,500	-88,500	-7%
Commercial/Industrial Rent	32,131,000	32,983,000	852,000	-7%
Parking	6,527,000	7,323,000	796,000	12%
Filming	50,000	20,000	-30,000	-60%
Special Events	75,000	75,000	0	0%
Miscellaneous Services	50,000	50,000	0	0%
Facility Damage	6,000	6,000	0	0%
Permits	200,000	300,000	100,000	50%
Miscellaneous Repairs	30,000	30,000	0	0%
Negotiation Fees	50,000	250,000	200,000	400%
Interest on Investments	1,720,000	1,000,000	-720,000	42%
Penalties & Svc. Charges	15,000	19,300	4,300	29%
Miscellaneous Receipts	409,000	409,000	0	0%
Subtotal	$50,647,000	$52,235,300	$1,588,300	3%
From Fund Balance	1,178565	0	-1,178,565	-100%
Total	$51,825,565	$52,235,300	$409,735	1%

The major changes in the FY 04/05 revenue budget compared to the prior fiscal year are in Cargo, Harbor Services, Commercial/Industrial Rent, Parking, Permits, Negotiation Fees, Interest on Investments, and use of Fund Balance as a result of the following:

- Revenues from cargo shipping operations are projected to increase by $202,000, or 5%, based on cargo facilities rent increases and new lease for RMC beginning January 2005.

- Revenues from harbor services are projected to increase by $150,000, or 21%, based on projected dockage revenue and cost of living increases estimated at 2% for current leases plus

- Revenues from commercial/industrial rents are projected to increase by $852,000, or 3% mainly due to scheduled rent increases, CPI adjustments, and new and renegotiated leases.

- Revenues from parking are projected to increase by $796,000 or 12% due to various parking lot rent negotiations and parking meter rate increase implemented in October 2003.

- Revenues from permits are projected to increase by $100,000, or 50% based on anticipated projects.

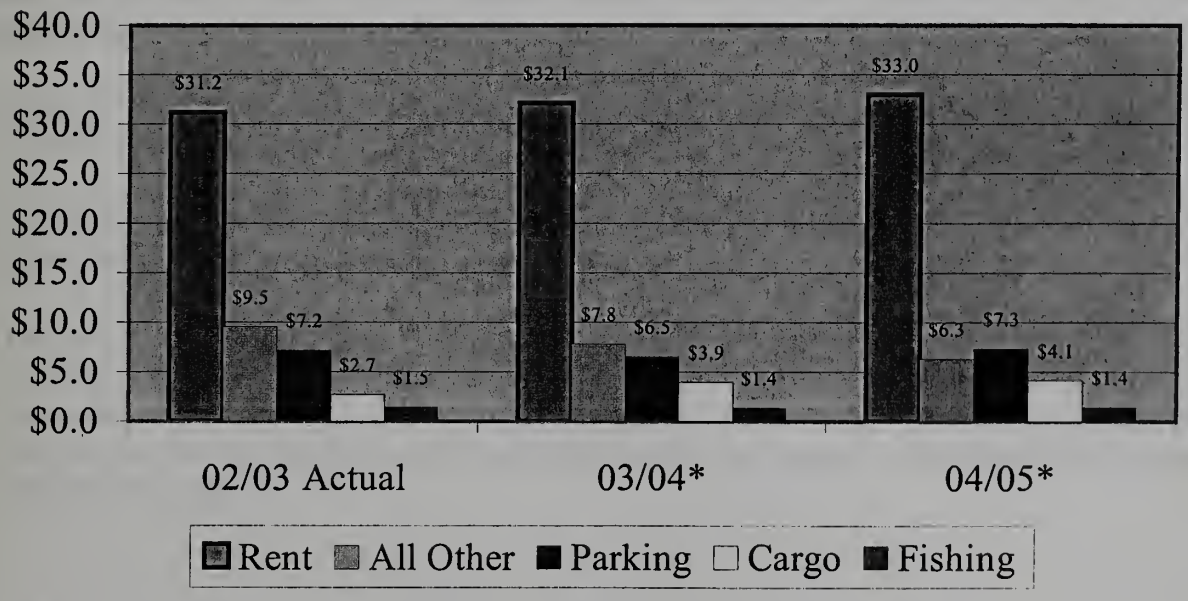
- Revenues from negotiation fees are projected to increase by $250,000 primarily due to anticipated exclusive negotiation fees for development projects, including Embarcadero Hotel, Rincon Park Restaurants, and Pier 27-31 Mixed Use Recreation Project.

- Interest income is projected to decrease by $720,000 or 42% due to low interest rate. The projection is based on an average earnings rate of 2% on an average operating balance of approximately $50 Million, and additional earnings from the debt service reserve fund held by the trustee.

- Transfer from fund balance decreased by $1,178,565 due to the Port's effort to strictly fund ongoing operating costs from current year operating revenues.

Revenue for a three-year period is as follows:

Revenue
FY 02/03 - FY 04/05
(in millions)



*Budget

Expense
The proposed FY 04/05 expense budget of $52.2 million is a $0.4 million increase, or 1%, over the prior fiscal year. The expense summary for FY 04/05 is as follows:

	FY 03/04	FY 04/05	Increase/ (Decrease)	Percent
Salaries & Benefits	$21,948,135	$22,105,806	$157,671	1%
City-wide Overhead	423,341	550,000	126,659	30%
Other Current Expenses	6,769,326	6,876,966	107,640	2%
Materials & Supplies	1,535,378	1,593,461	58,083	4%
Fixed Charges	1,016,400	1,005,825	(10,575)	-1%
Capital Outlay	306,500	249,300	(57,200)	-19%
Facilities Maintenance	991,200	1,155,400	164,200	17%
Debt Service	6,159,325	6,133,525	(25,800)	-0%
Insurance	2,268,556	2,219,600	(48,956)	-2%
City Attorney	2,233,534	2,495,000	261,466	12%
Fire Protection	1,693,435	1,900,000	206,565	12%
Workers Comp.	750,000	1,200,000	450,000	60%
Light, Heat & Power	1,374,000	1,368,000	(6,000)	-0%
Revenue Transfer Out/Recovery	211,083	270,125	59,042	28%
All Other	4,145,352	3,111,842	(1,033,510)	-25%
Total	$51,825,565	$52,234,850	$409,285	1%

The major changes in the FY 04/05 expense budget over the prior fiscal year are in City-wide Overhead, Facilities Maintenance, City Attorney, Fire Protection, and Other Services.

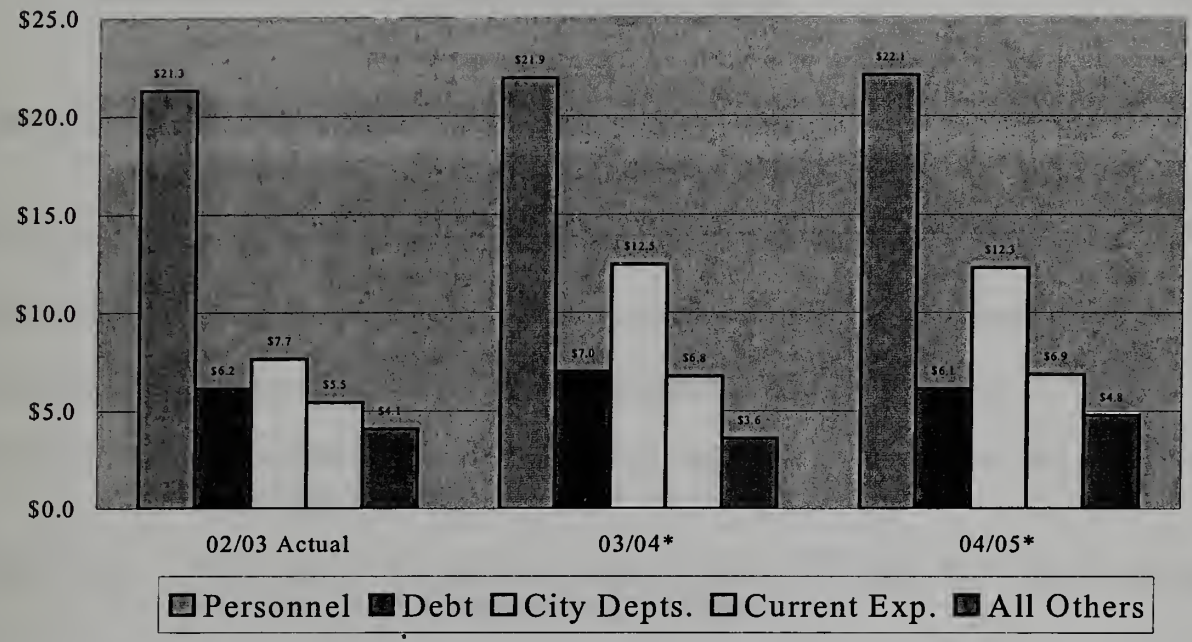
- The Port's share of City-wide Overhead is projected to increase by $126,659, or 30%, based on staff's estimate of the Controller's County-wide Cost Allocation Plan (COWCAP).

- Facilities Maintenance costs are projected to increase by $164,200 or 17% mainly due to expansion of storm water management program.

- The major services of other City Departments will increase by $912,031, or 15%. This increase is primarily due to projected increases in workers compensation and fire protection costs, and an increase in legal fees for additional legal services required for new development projects and leasing activities, environmental compliance, workers compensation cases, and anticipated litigation.

Expense for a three-year period is as follows:

Expense
FY 02/03 - FY 04/05
(in millions)



*Budget

Port staff recommends that the Commission adopt the annual operating budget and authorize the Executive Director to make non-material changes to the budget as may be necessary.

Non-material changes are generally technical adjustments to the budget, not policy changes. Examples of non-material changes include updates to the budget for salaries and fringe benefits as City-wide MOU's are finalized or adjustments to work order amounts with other City departments as cost estimates are finalized. Once the Mayor's Office and the Board of Supervisors finalize the budget, staff will report to the Commission regarding the adopted budget, detailing all changes made by staff, the Mayor and the Board.

Prepared by: Chudi Chuba, Finance Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-15

WHEREAS, Port Commission staff has developed a proposed Fiscal Year 2004/05 operating budget; and

WHEREAS, The operating budget includes projected revenues of $52,235,300; and

WHEREAS, The operating budget includes projected expenses of $52,234,850; and

WHEREAS, The operating budget includes projected surplus of $450; and

WHEREAS, The operating budget must also be approved by the Mayor and the Board of Supervisors; now therefore, be it

RESOLVED, That this Port Commission hereby approves the Fiscal Year 2004/05 operating budget as presented by staff; and be it further

RESOLVED, That the Port Commission hereby authorizes the Executive Director to make non-material changes to the operating budget as may be necessary.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 10, 2004.

_____
Secretary

SAN FRANCISCO
PORT COMMISSION

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FEBRUARY 10, 2004
MINUTES OF THE MEETING

MEMBERS, PORT COMMISSION

HON. WILFRED HSU, PRESIDENT
HON. MICHAEL HARDEMAN, VICE PRESIDENT
HON. KIMBERLY BRANDON
HON. SUE BIERMAN

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE REGULAR MEETING
FEBRUARY 10, 2004

1. ROLL CALL

Commission President Wilfred Hsu called the meeting to order at 3:07 p.m. The following Commissioners were present: Wilfred Hsu, Michael Hardeman, Kimberly Brandon and Sue Bierman.

2. APPROVAL OF MINUTES - January 27, 2004 Meeting

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; the minutes of the January 27, 2004 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report: Mr. Wong reported the following:

- State Lands Commission Meeting – On February 2, 2004, the State Lands Commission meeting was held in the Ferry Building. Lt. Governor Cruz Bustamante and State Controller Steve Westly attended the meeting and had an opportunity to tour the Ferry Building. They were impressed with the Ferry Building and commended the Port for a job well done.

- 2004 Crab Festival @ Fisherman's Wharf – The second annual Crab Festival and Classic Car Exhibit at Fisherman's Wharf will kickoff on Friday, February 13 at Pier 45, Shed A. On Friday, Mayor Newsom will lead a long line of classic cars parading from City Hall to Pier 45. Mayor Newsom along with members of the Fisherman's Wharf community will hold a ribbon-cutting ceremony to open the exhibit and launch a month-long crab festival in San Francisco. Local restaurants throughout the wharf and the City will offer specially priced menus that feature dungeness crab. More than 70 classic cars will be on display for public viewing at Pier 45, Shed A from 10:00 a.m. to 5:00 p.m. through February 16th. The Fisherman's Wharf Crab Festival and Classic Car show is part of the citywide 2004 Crab Festival celebration sponsored by the San Francisco Convention and Visitors Bureau. He invited the Commission to visit the Classic Car Exhibit during the President's Day weekend and enjoy the Crab Festival through the month of February.

4. PLANNING AND DEVELOPMENT

A. Request for approval of Harbor Code amendment to impose parking restrictions, post

signage and place meters along Terry Francois Boulevard, Mission Rock Street and on the Wharf adjacent to Pier 48. (Resolution No. 04-13)

David Beaupre, Planning & Development, presented the item and requested Commission's approval. The Board of Supervisors delegated authority to the Port Commission to adopt the Harbor Code to regulate the use of vehicles on Port property including the use of parking meters. The Port Commission previously adopted the Harbor Code. Due to increasing development in the Mission Bay including the development of the ballpark, China Basin Shoreline Park, Terry Francois Blvd. and a new parking lot at Pier 54 for the public boat launch, it was determined that a need for new parking restrictions along Terry Francois Blvd and other areas were required. Port staff, working with its tenants, the City's Dept. of Parking and Traffic and the Ballpark/Mission Bay Transportation Coordinating Committee, have jointly developed and agreed upon reasonable parking restrictions for those areas. As illustrated in the staff report, the restrictions include:

Terry Francois Blvd.

- *Third Street to Pier 48 (Generally)*
  - 2 hour maximum meter parking 7:00 a.m. to 7:00 p.m. everyday
  - No parking tow-away zone 2:00 a.m. to 6:00 a.m.
  - Tow-away, no stopping, from three hours before until three hours after Ballpark events.

- *Pier 48 to Mission Rock Street*
  - No Parking, tow-away zone, except for loading and unloading of passengers or freight.

- *Mission Rock Street to Illinois Street*
  - 2 hour maximum parking at spaces controlled by meters or areas designated by signage 7:00 a.m. to 10:00 p.m. everyday. (Parking meters will be installed in the future when development in Mission Bay occurs.)
  - No parking, tow-away zone, 2:00 a.m. to 6:00 a.m.

Mission Rock Street:

- *Third Street to Terry Francois Boulevard*
  - 2 hour maximum parking at spaces controlled by meters or designated by signage 7:00 a.m. to 10:00 p.m. (Parking meters will be installed in the future when development in Mission Bay occurs.)
  - No parking, tow-away zone, 2:00 a.m. to 6:00 a.m.

Marginal Wharf Adjacent to Pier 48:

- Staff will install eight parking meters, with a 2 hour maximum parking limit, effective 7:00 a.m. to 7:00 p.m. every day
- Tow-away, no stopping, from three hours before until three hours after Ballpark

events. (Staff will post special signs indicating days and times of Ballpark events.)

- No parking, tow-away zone 2:00 a.m. to 6:00 a.m.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 04-13 was adopted.

5. MARITIME

A. Request for authorization to accept and expend $450,000 in grant funds awarded to the Port of San Francisco by the Transportation Security Administration for the purpose of enhancing facility and operational security at the Port's cargo terminal at Pier 80. (Resolution No. 04-12)

Peter Dailey, Maritime Director, presented the item and requested Commission's approval. Seaport security remains a priority on federal, state and local levels. The Port of San Francisco, with its 7-½ miles of diverse harbor facilities, provides critical maritime, commercial, and transportation services for both the City of San Francisco and the greater bay area region. The Port has unique security needs and responsibilities, and is a member of the Area Maritime Security Committee (AMSC), which assists the Coast Guard in its efforts to aid the security of San Francisco Bay. Port staff also works closely with the Transportation Security Administration (TSA), US Customs Service, CA Dept. of Homeland Security, the San Francisco Office of Emergency Services and the San Francisco Police Department. In early 2002, Secretary of Transportation Norman Mineta announced the implementation of a new Port Security Grants Program, managed by the Transportation Security Grants Program, managed by the TSA, to finance security enhancements at critical national seaports. Under this program, the Port of San Francisco received a grant in the amount of $500,000 to conduct a comprehensive security vulnerability assessment of its waterfront facilities. This assessment has been completed. To date, all port facility security plans as mandated by federal law have been completed as well as those of the tenants who were also mandated to complete the facility security plan. In early 2003, the TSA announced a second round in the Port Security Grants Program. Staff submitted a grant application for funds to enhance security at the Port's cruise, ferry and cargo facilities. In June 2003, Secretary of Homeland Security Tom Ridge announced that the Port of San Francisco qualified for a TSA Round 2 grant in the amount of $3,475,000. The majority of this work is for Pier 35. Design and engineering for most of this work is underway and staff will seek Commission's approval of construction contract later this year. It's a difficult task to incorporate these kinds of changes to a facility when a cruise ship is on port virtually every month of the year. In July 2003, the TSA announced a third round in the Port Security Grants Program. The Port of San Francisco staff submitted a grant application for funds to enhance the Port's cargo and ferry facilities, located at Pier 80 and Pier 14 (ferry breakwater public access project). In December 2003, Secretary Ridge announced that the Port of San Francisco qualified for a TSA Round 3 grant in the amount of $450,000 for the Pier 80 project. The use of these grant funds will assist the Port in complying with current security regulations mandated by the United States Coast Guard and improving security at the Port's cargo terminal at Pier 80. The intended scope of work includes access-control features such as a new guard station at the main gate,

vehicular barricades and fences, improved lighting and surveillance cameras. Mr. Dailey requested Commission's approval to accept and expend $450,000 TSA funds under its Port Security Grants Program, Round 3, for the purpose of enhancing and operational security at the Pier 80's cargo facility as specified by the grants program. After Commission's approval, staff will seek Board of Supervisors' approval.

Mr. Dailey mentioned that last week Supervisor Michela Alioto-Pier asked the City Budget Analyst to complete an analysis of waterfront security. Port staff is working with the budget analyst as well as the City's Office of Emergency Services. A meeting is scheduled next week to coordinate the efforts for waterfront security. The Port is thrilled to receive $4.5 million in funds over the last two years to enhance its hardware. The ports, nationally, are still concern about the federal government's lack of support of increased operational expenses. In terms of security, the Port of San Francisco's cruise terminal operation expense is close to $150,000 for 10 police officers, which is mandated by the federal government. Those operational costs are not reimbursable. The most recent federal budget sent by the White House did not include funds for operational costs at the ports. All California ports are concern about the lack of funding for its operational needs.

Commissioner Hsu reported that he met with Lt. Governor Cruz Bustamante last week. They discussed issues surrounding the TSA and the Dept. of Homeland Security mandate that requires ports to be strengthened in the area of security. He understands the issues and he's on top of it. He understands the Port's predicament that although there are grants and monies coming from the federal government, they are very restrictive as far as what the Port can and cannot do. The mandate requires strengthening Port's security at all level. There are pockets of work that the Port needs to do that are not funded. Last year, he wrote a bill for $400 million of funds that are geared to fund these projects but came up 3 votes short of passing. He was disappointed that it did not pass but he is not giving up. He's going to continue to work on the port's behalf to get those funding. Commissioner Hsu looks forward to working with him on that issue.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 04-12 was adopted.

B. Informational Presentation: Summary of January 22-23, 2004 Cruise Terminal Environmental Advisory Committee (CTEAC) Workshop.

Jay Ach, Environmental Manager, provided the Commission a status report of the Cruise Terminal Environmental Advisory Committee (CTEAC) workshop. The James R. Herman cruise terminal project is now fully entitled. Through the EIR process, the Planning Commission, the Port Commission and the Board of Supervisors approved environmental mitigations measures for the project. Additionally, BCDC provided conditions to its permit for the project. One mitigation measure was the creation of a Port-sponsored citizens advisory group, to be chartered to further investigate potential mitigations to both air and water quality impacts that might result from the project. It was via this mechanism that CTEAC was established.

CTEAC is composed of a number of interested parties, including neighborhood groups, environmental organizations, cruise industry representatives, organized labor, regulatory agencies, and the current operators of the terminal at Pier 35, to name a partial list. Group meetings are being moderated by an outside third-party facilitator, Mr. Harry Seraydarian, a recently retired US EPA environmental mediator.

CTEAC held its first meeting in September 2003. At its second meeting in November, the members agreed that the most efficient way to get all CTEAC membership up to speed was to have a workshop-style session where experts in various aspects of both cruise operations and the associated environmental issues would provide an overview to CTEAC members. The goal set for the workshop was to provide everyone in CTEAC with the same comprehensive background so that future meetings could focus on identifying and addressing specific issues.

To this end, all in attendance would agree that the workshop was a smashing success. The workshop was held over two full days on January 22 and 23. Twenty-four individuals made presentations to CTEAC. The presenters included representatives from US EPA Headquarters in Washington DC, local EPA Region 9 staff, USCG, the CA Air Resources Board, BAAQMD, the Regional Water Board, the State Lands Commission, three environmental organizations, three cruise lines, a marine fuel broker, a cruise ship engine manufacturer, and the operators of Pier 35. Over 40 people attended the workshop full time; several others were able to attend part of the workshop.

It was particularly gratifying when, at the end of day 1, the moderator asked the assembled group to "Raise your hand if you learned something new today," and the response was a unanimous raising of hands.

Of the attendees, Port staff would like to express its particular thanks to Commissioner Bierman, who invested two days of her time in attending the workshop. Port staff is also pleased to report that Supervisor Sandoval, while unable to attend himself, sent his aide Justin True for part of day 2.

Mr. Ach presented Port staff's observations reached at the workshop and the direction CTEAC is likely to take, beginning with its next meeting to be held later this month.

The first observation was that relative to many industries, the cruise industry has historically been relatively lightly regulated, much like the maritime transportation industry in general. Port staff suspects that this came about in large part due to the difficulty in regulating foreign-flagged vessels that are transient visitors wherever they go, and the resultant legal confusions about jurisdiction and enforceability.

The second observation, however, was that this picture is now changing, changing quickly at the international, national, and state levels. For example, the International Maritime Organization (IMO) has developed standards regarding emissions from marine engines, sulfur content of marine fuels, and ballast water. While there are issues with IMO standards, the existence of them does indicate an increasing international awareness of maritime environmental issues.

Domestically, in 2003, the US Coast Guard proposed ballast water regulations to address the spread of non-native organisms. The Federal action was preceded by California ballast water legislation in 1999, which was reauthorized and strengthened last year as AB 433. AB 433 removes exemptions from its predecessor, adds reporting requirements, furthers research into treatment technologies, and provides mechanisms and timelines for additional regulation.

Regarding air issues, US EPA has set emission standards for small and medium sized marine engines and is working on standards for the largest marine engines. Additionally, US EPA is working on eventually declaring both US coasts low-sulfur fuel zones under IMO regulation. This would mandate the use of low sulfur bunker fuels by all ships coming into US ports once they reached US waters.

The State of California is also very active in addressing maritime air impacts at this time. Originally motivated by Southern California air quality concerns, the California Air Resources Board (CARB) has been conducting Maritime Air Quality Working Group meetings in order to gather information for future regulation of all maritime emissions, not just cruise ship emissions, throughout the State. The regulatory programs envisioned by CARB are already beginning to be implemented, and will continue to be phased in through 2010.

This increased regulatory scrutiny at many levels leads to observation number three: In response to both existing and proposed new standards, the cruise industry is developing new equipment and adopting new operating procedures that will reduce cruise industry impacts to the environment. As an example, while Federal wastewater standards for cruise ships have existed since 1972 with little change, the passage of specific Federal standards for the State of Alaska in late 2000, mirrored by Alaska State standards in 2001, encouraged the cruise industry to rapidly develop and install advanced wastewater treatment systems in the Alaskan fleet, even though discharge standards will not be in effect until 2005. These systems produce effluent that exceeds the highest standards for onshore wastewater treatment. While developed specifically for Alaska, cruise ships with these systems onboard are now calling at the Port of San Francisco, allowing California to reap the benefit of Alaskan standards. San Francisco can expect to see similar benefits from Federal and State air regulations as they are further developed for the maritime industry. In a nutshell, the average cruise ship that calls on our new terminal when it opens sometime around 2009 will be more environmentally friendly than the average year 2000 ship, used to evaluate impacts of the terminal.

Finally, observation four: While the cruise industry will improve environmentally even without the intervention of the Port, it is well worth the efforts of the Port and CTEAC to look into specific designs, technologies, or actions that will directly reduce impacts at the new terminal. It will be important to distinguish between what results can best be achieved at the State or Federal level, and what issues are best and most feasibly addressed on a local, terminal-specific level.

The nest CTEAC meeting is scheduled on February 25th. At the meeting the Port's berthing agreement for cruise ships will be reviewed, having been revised by Port staff

to address environmental issues, and to specifically ensure a reporting mechanism for wastewater and ballast water discharges, should they occur.

CTEAC members seem to agree that, because of wastewater and ballast water discharge prohibitions, mitigation of air impacts is the highest priority topic to address. The air mitigations that are most likely to be investigated initially by CTEAC are the potential use of low-sulfur fuels and the potential use of shoreside power. As part of the close of escrow, SF Cruise Terminal LLC, the developer, will deposit $50,000 with the Port to be used to fund studies proposed by CTEAC. It is the sense of Port staff that a shoreside power feasibility study is likely to be the primary study undertaken by CTEAC with these funds.

The recent CTEAC meeting was a real success, and Port staff believes that CTEAC will play a valuable role in developing a cruise terminal at the Port that will be an example of environmental design and practice for the West Coast.

Commissioner Brandon commended staff for organizing a well-attended workshop. She received phone calls and letters commenting about the success of the meeting.

6. ADMINISTRATIVE SERVICES

A. Request for approval of Fiscal Year 2004/05 Capital Projects. (Resolution No. 04-14)

For the record, Commissioner Hsu stated that there was a brief fire drill. The Port Commission meeting went back in session shortly thereafter.

Joel Robinson, Director of Administrative Services, requested Commission's approval of the Port's 2004/05 Capital Plan. The plan provides Port funding in the amount of $10,680,257 for capital projects. The Capital Plan will be funded out of the Port's unappropriated operating fund balance. After the funding of the 2004/05 Capital Plan, the Port will retain an operating reserve of $11.6 million.

Commissioner Hsu asked how soon the unfunded amount of $9.5 million is needed for the projects. Mr. Robinson replied that each project has a different timeline on the unfunded balance. For example, the substructure repair at Pier 35 will need to be completed over the next several years. Staff has 5 years to secure the $4.5 million unfunded amount to complete the project. Staff has 2 years to secure the $2.6 million additional funding needed for the Illinois Street Bridge project.

Commissioner Hsu indicated that according to the staff report, the Port will retain an operating reserve of $11.6 million after the Commission approves the $10.68 million for capital projects. The Port is almost out of money after it funds the $9.5 million unfunded projects. He asked about staff's proposal to fund future projects. Mr. Robinson replied that in the past, the capital projects have been funded by operating surpluses generated from previous years. Staff hopes to generate a surplus in its revenue accounts to fund the capital projects without dipping into the Port's operating reserve. Staff will continue to build up that account so that there will always be money for capital projects.

Commissioner Brandon asked if previously funded or unfunded capital projects are now all unfunded or are there any projects not included on the list. Mr. Robinson replied that the list of projects on the staff report is just for this fiscal year. There is a list of projects from prior years with budget that could be funded or unfunded. A couple years ago, as a budget balancing measure, staff reallocated funds from some of the capital projects to current needs but allowed some projects to remain funded. There are projects in the capital project account that are funded, but are not totally funded.

Commissioner Brandon indicated that without all the information at hand, it's hard to understand what projects are being funded this year versus what projects were funded or not funded in previous years and what the priorities are. Staff came up with new funding projects that needed to be in the capital plan. For instance, the Pier 35 substructure repair project is being funded for $250,000 and is short of $4.45 million. That $250,000 could totally fund another project that is not even on the list. Mr. Robinson replied that from the priorities that were developed within the capital project committee, the $250,000 would be used for the Pier 35 design phase only. It does not fund anything beyond the design phase. Commissioner Brandon commented that it usually takes 4-5 years to actually do the work. If we pay for the design phase today, what good would it do five years from now? Mr. Robinson replied that at some point, the design phase has to commence and the priority that was established for 04/05 was to begin the process of design to see if the $4.5 million is an accurate figure. The design process is always the first step in determining what the total capital project will be.

Commissioner Brandon indicated that there's enough funding to build the Illinois Street Bridge, but the Port will not be able to use it once it's built. The Port needs to ensure that the bridge is built and be able to use it or else not build it at all. It does not make sense to fund a bridge that no one has access to. Mr. Robinson replied that staff has labored with that point as well. There is a substantial amount of money in the total cost of the bridge that are grant funds from Muni and Catellus. There are timelines on those funds that are quickly approaching. The Port has to make a commitment either to build the bridge or not. Staff has looked at federal funding to make up for the gap in funds for the approaches. Unfortunately, the Port has to make a commitment for the construction of the bridge prior to and a commitment of those funds we seek. Staff would like to be in a better position but we're not. Staff feels relatively secure that over the 18-month span of construction for the bridge, we will be able to find new grants or through other means to construct the approaches to the bridge. If not, the very worst case scenario would be the Port would have to fund the approaches to the bridge. No one wants to see a bridge that leads to nowhere. The timeline is short; construction needs to commence in October of this year. Staff will not have a commitment of the T3 funds which has been requested from the federal government by that time. It's a bit of a risk and a bit of a chance, but staff feels that over the 18-month construction period of the bridge, we would be able to find the money.

Commissioner Brandon asked how could the Port ensure that the bridge is built and be functional. Mr. Robinson replied that the Port could guarantee to fund the approaches to the bridge. The Port cannot make a commitment to anybody's grant or fund or anybody else picking up the pieces because if the Port builds it, it's going to be the Port's bridge.

The Port would be responsible for building the approaches. Commissioner Brandon asked if that language could be included in the resolution. Mr. Robinson replied that it's a fact of life i.e. it's going to be the Port's bridge and it will be the Port's responsibility. The bridge will not be built without approaches. It would fall squarely on the Port's shoulders to fund or find the money to do it.

Commissioner Brandon asked about the amount of capital funding for the Port's entire capital plan. Mr. Robinson replied that the Port's capital plan amount is $40 million. Approximately $26 million is included in the projects listed in the staff report. In terms of looking for a solution for the bridge project, Mr. Robinson suggested that staff could reallocate portions of the funded capital projects that are already in the pipeline to the bridge project. Commissioner Brandon commented that it is a good idea to review the projects and reallocate funds for all the projects especially if there are partially funded projects that have been sitting for years and the Port has critical projects that need to be fully funded now. Mr. Robinson reminded the Commission that the reallocation of funds was brought to the Commission for approval a couple years ago. Staff will provide the Commission a copy of all the funded projects. Some of the projects are underway, some have begun, and some are committed. When staff looked at those projects for possible funding of ongoing projects, it was difficult to find any projects that could logically be unfunded and reallocated without creating problems. Commissioner Brandon indicated that a lot of the projects are funded but there are also partially unfunded projects that staff is still trying to find funds.

Lawrence Brown, Port's Financial Analyst, pointed out that of the $40 million in capital funding, $26.4 million is included in the projects listed in the staff report. Those projects were previously unfunded but are now funded in the 04/05 capital plan. They also include grant funds. Expenditures have already been made on some of the projects that have been funded.

Mr. Robinson indicated that it's tough to look back and reprioritize. The projects that could logically be reallocated were reallocated. However, anything could be done if we need to reprioritize. Commissioner Brandon commented that the Commission needs to see which projects were reallocated and which ones are not being funded that were previously funded. Mr. Robinson replied that staff provided the information to the Commission during the reallocation process but will provide the Commission copies of that reallocation for review.

Commissioner Hardeman commented that he shares Commissioner Brandon's concern about the Illinois Street Bridge project. As vital as it is for the Port, especially for maritime, they are very concerned about the project's rising cost. They know it has to be done but they hate to sink millions of dollars into a project where they can't see the light at the end of the tunnel.

Mr. Robinson indicated that this project cost $10-11 million many years ago. It now costs $23 million. If the Port doesn't stay with the current schedule and utilize the bids within the next 8 months, the cost to build the bridge at a later date will escalate.

Corinne Woods asked the Commission to put two projects high on the priority list when the Port gets more money: (1) the overall planning for Pier 70; and (2) the Pier 54 public boat launch. She has been involved with the Pier 70 Citizens Advisory Group (CAG) for several years and like the Illinois Street Bridge project, things keep sliding. They hope to be able to move forward. Port staff has probably informed the Commission about the RFP for a certain part of the opportunity area. The community is very concerned that this be done in the context of overall planning for the whole Pier 70. The Commission has been promising the construction of the public boat launch ramp for 15 years. She knows that the funding had to be reallocated. The Port is in the process of finishing the parking lot for the public boat ramp. It's going to be a nice parking lot but the boats are still going to be using the funky old ramp.

Toby Levine, Pier 70 CAG co-chair, indicated that about a month ago, the Commission agreed to a mothballing procedure for Bldg. 113-114. Since then and prior to that time, they have become aware of the fact that the situation in the general Pier 70 area is quite dangerous, particularly for the old buildings that are uninhabited. She asked the Commission to think about some other tools besides the barricades and fencing for the valuable buildings. They don't want to see the buildings burned down or vandalized. They don't want to see people get injured or killed on the properties. She also reaffirmed Ms. Woods' comments that Pier 70 CAG is about to embark on a whole planning process in terms of the RFP. She was sure that the Commission is aware of the fact that there are several institutions that are interested in the old Pier 70 buildings but they will always be asking where the plan is and what is going to happen and are they always going to have to come in front of these buildings; the trucks from the marshalling yards or is there a way they could be diverted over to 22nd Street. It will be difficult to sell the RFP without some commitment to an overall plan in the future. This is a tremendous opportunity, as far as open space is concerned, north of the drydock. The drydock is a valuable resource for San Francisco and should be protected but there are some open spaces north of Pier 70 that they would like to see incorporated into the overall planning. They know that the marshalling yards are needed and will always be there. They know that they are going to be the recipients of at least a couple of the plants but that should be looked at and figure out how it all works together. They would like to see the area work together in a smooth manner. She asked the Commission to take those points into consideration and figure out a plan to fund a special area plan for the Pier 70 in the next year or two.

Commissioner Hsu thanked Ms. Levine for her suggestions and assured her that the Port will take it to heart when staff works on this project.

Commissioner Bierman thanked Ms. Levine for hanging in there all these years.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor; Resolution No. 04-14 was adopted.

B. Request for approval of Fiscal Year 2004/05 Operating Budget. (Resolution No. 04-15)

Joel, Robinson, Director of Administrative Services, requested Commission's approval

of the operating budget for FY 04/05. The proposed revenue budget of $52.2 million for FY 04/05 reflects a $409,735 increase from the 03/04 budget. The proposed expense budget of $52.2 million for FY 04/05 reflects a $409,285 increase from the previous fiscal year. Port staff accomplished the goal of balancing the budget. He acknowledged Lawrence Brown for his work on the capital budget and Chudi Chuba, Andres Acevedo and John Woo for their work on the operating budget. On page 2 of the staff report, revenues from cargo shipping operations, harbor services and commercial/industrial rents have increased. The chart on page 3 illustrates Port's revenues from 02/03 to 04/05. Our revenue is inching up, not as rapidly as we would like to see but it's not going down. These are difficult times for the Port and businesses throughout the City but with the work of the directors and their staff, we managed to maintain even revenues for the Port with increases every year, which allowed staff to present a budget that does not lay off any employees or have significant staff reductions. Page 4 of the staff report shows the summary of Port's expenses such as salaries, benefits and insurance payments, which have gone up significantly over the past several years. The expenses have gone up faster than the revenues but by maintaining and watching Port's accounts staff was able to maintain a fair level of expense vs. revenue. He thanked staff for all their efforts in balancing the budget.

Frank Martin Del Campo, Local 790 representative assigned to the Port, indicated that shop stewards and other union members will provide the Commission theirs views and concerns regarding the proposed budget. The members are experiencing high degrees of anxieties around the budgetary consequences not only at the Port but also in the city. Their members are very concerned and sought the assistance of their union about the growth of the top positions in the department, in particular, the deputy directors. The members feel that the growth of deputy director positions is not justified by any expansion of the Port or any new work or new kind of duties. As a matter of fact, many front line supervisors are concerned that deputy directors are essentially taking the work of front line supervisors. The members feel that this is done to justify the continued appointment when it does not warranty the higher labor grades. What adds insult to injury is when their members have unqualified employees who are above them in grade and making more money but yet their members are asked to train them in the jobs the members perform very well. At a recent labor breakfast, some members pointed out the issue of high salaries in this department, which is not the case in every department. He was surprised to learn at a recent breakfast that Mayor Newsom was aware of the number of high salaried employees in certain departments including the Port, the City attorney's office and district attorney's office. Mr. Del Campo apprised the Commission of a disturbing practice regarding hiring of personnel and labor policies. All too often, folks are hired, bypassing Civil Service procedures. The management waits until the eligibility list, which is composed of qualified individuals who were tested and competed for their place on the list, expire and hire their friends. Their members are being denied their hard-earned opportunity to get promoted. Women union members feel that there is a glass ceiling that is impenetrable. The corruption that exists throughout the City has permeated into the personnel and labor policies. Contrary to some views, city workers aren't around to make politicians look good. They are around to serve the public, their co-workers and to get the job done at the Port. He was also concerned about a pattern of targeting shop stewards. The two shop stewards will share their experiences

at the Port. Their only crime was they stood up for their co-workers and insisted on fairness at the Port. The circumstance in one case is unlawfully withholding evidence used to transfer a shop steward immediately after an automobile accident, setting up and firing employees for alleged performance issues. They have a case with the Port regarding managerial sabotage, a mid-level manager intentionally going into the computer system to impede the ability of a subordinate to do her job and then raise the issue of performance. It appears that the Port has condoned that kind of conduct. Some people engaged in misconduct get transferred and continued to have the same perks. Mr. Del Campo personally represented complaints of harassment, discrimination, hostile environment, etc. He pointed out that the Port has these kinds of problems. He asked the Commission to take a look at these issues. They will be raising these issues in the City's budgetary process. Whether the budget leaves the Port intact with no layoffs, they know that when it goes to the City process, they will be asked to pay 7.5% of their salaries. The members are being asked to take the cutbacks. When these kinds of problems are allowed and corruption exists in employment and labor practices, it is not fair to the City workers that do the job. He asked the Commission to consider his comments prior to adopting the budget and taking their comments in an affirmative manner and look into them.

Mauricio Rodriguez, a 20-year Port employee, indicated that three years ago, he hurt his back and he waited for 18 months to have the surgery done. The Port's insurance carrier had him like a ping pong ball between doctors until somebody operated on him. He tried to come to work in July 2003. Mr. Robinson was kind enough to tell him that they were going to work around his restrictions but that was not what Kathy Mallegni, the Personnel officer, told him. She kept telling him that he was a burden at the Port, especially since his doctors recommended a four-day week. Now, that he is trying to return to work, he has given up that benefit because he is afraid that if he ask to work four days a week, Ms. Mallegni will not give him back his job. He tried to work at the Dept. of Parking and Traffic but things didn't work out. He wanted to work even though accepting that job meant a demotion. Now his condition has improved and he's been trying to work at the Port but he feels that Kathy Mallegni is blocking him. He is ready to start to work tomorrow. Kathy has sent his doctor a very biased letter basically prodding the doctor to deny his return to work. The doctor will not see him until mid-March. In the meantime, the Port's insurance carrier has not given him any money since last October. He's lucky he has a wife and friends to help him; otherwise, he will be a homeless person. He and his lawyers have called the insurance carriers but did not get return calls. The lawyer has also written them letters and they are still waiting for the money. He has been working at the Port for over 20 years and he feels that he deserves to be reinstated. He appealed to the Commission's sense of justice and asked that they put the workers first. They are the most valuable assets and to consider employees disposable is not right, especially in his case, where he has literally given the Port his back. He thanked Mr. Del Campo and Local 790 because if it weren't for them, he would have been discarded by now.

Commissioner Hsu directed Executive Director to look into Mr. Rodriguez's case and see if there is any wrongdoing on our part and report back to the Commission.

Commissioner Bierman commented that she was shocked with the testimony. It seems to her that something is wrong and she hopes that by next week, they'll hear more about it. If something is wrong, the Port should do something about it.

Joyce Wong, Local 790 shop steward and a five-year Port employee, indicated that she's no longer an employee at the Port. She took a position with the sheriff's department. Two years ago, she has requested for an upgrade of her position due to increased responsibilities. She was given the excuse by Kathy Mallegni that an upgrade wasn't necessary nor was she qualified for an upgrade and this was all due to budget constraints. Later that year, upper management created two new middle management positions. One was a maintenance manager and the other was a chief stationary engineer. Both of these positions were in the $80,000+ level. These positions were not necessary and have not proven to increase productivity. In fact, it has literally hindered completing any maintenance work. It's been the practice of the Port to penalize employees who report misconduct, threats and harassment. During her tenure as a shop steward at the maintenance department, she handled numerous complaints against mid management employees for harassment, intimidation, threats, lies and sabotage. She was subjected to that because she was a shop steward and she stood up for the employees. Unfortunately, it seems that the only way to get a promotion is for the employee to leave the department, take a position elsewhere as she has done. These employees have worked long years at the Port and have the knowledge and the experience. They are all leaving the Port because they cannot get any justification here.

Senaite Shifferaw, Local 790 shop steward and former Port employee, indicated that she worked at the Port for five years at the Maritime Section. She has a 7-year old son. As a 1450, she handled about 11 people in a very diverse section of the Port. On December 9, 2002, a car struck her while on the job at Embarcadero and Washington. Her injuries were very serious. She had head trauma, back and shoulder injuries. Trying to heal from her injuries and six weeks into her disability, on January 27, 2003, she received a call from the Port of San Francisco Personnel Dept and was informed that she was laid off from her job. She was asked to come and collect her stuff within three days with no consideration whatsoever as to what she was going through healthwise. She was told she was bumped by an employee that has been out on leave for more than 7 years. She has been at the Port for five years and no one ever told her that she was holding a position for somebody that was on leave. Within three days, she was asked to leave with her disability and the condition she was in. If it wasn't for the assistance of her friends at the Port, it would have been a very bad situation to clear up her cubicle. The Port of San Francisco is like a pyramid. There are many of them at the bottom of the pyramid. They feel the shake, they feel distraught, and they feel the strong movement of the earth below them. They don't have any decision rights. Those make decisions usually look at them for layoffs, use their jobs to be politically connected and to secure their own positions. The Port is in a very sad situation right now. After she was laid off, Frank Del Campo, filed a grievance or a request for information regarding the leave request of the 1450 that displaced her. The Port refused to give them the information. It took them a year to release the document. They had to file a suit with the Unfair Labor Practice Council. The leave request was provided and that leave request which gives right to the 1450 to bump her out of her position was backdated and signed by the Port Personnel Director,

It was a fraudulent document. It was created after she was bumped. It was signed and backdated to March 1, 2001. She served this Port not only as a 1450, Executive Secretary, but she also served SEIU members as their shop steward. She has been the shop steward for two years. In that capacity, she has filed grievances of discrimination, harassment, gender discrimination, and insensitivity to cultural aspects of employees. Everything went to deaf ears; no grievance has ever been disposed off in a rightful way. The Civil Service Rules are just rules with the Port management. Their MOU are just paper that doesn't have any weight and disrespected every time. They see fragment in this pyramid. The top has gone out, the middle is functioning this way, the bottom is still ok and they feel it's very important to bring their cases to the Commission before it crumbles. The Commission has to take a look and to take action on all those things that are happening with the Human Resources department, which is a very important asset for the normal functioning of the Port. There is no check and balance. Nobody checks anything. The personnel director is given absolute power to execute matters any way she feels and likes and absolute power corrupts absolutely. It has to stop. Check and balance should always be there so that Civil Service Rules are respected and their MOU is respected as well.

Stan Loftus, current Shop Steward of Local 790, works in the Meter Shop with Earl Cater. Mr. Cater has been at the shop for 14-15 years. He has been designated the lead worker. For $5 a day, Mr. Cater has trained an ironworker supervisor, a harbor maintenance superintendent, and a stationary engineer to be in charge of the shop. Mr. Cater is only a 9385, a general services officer, and yet every problem related to this shop goes to Mr. Cater. He is in charge of the as-needed personnel. He is in charge of all safety meetings. Whenever someone in Planning needs any parking information, they ask Mr. Cater. They are trying to get him upgraded to a supervisory position because he does timesheets, attends meetings and he even trains as-needed individuals. What you see here is a cap on all 790 personnel from elevating up to a position where they can be rewarded for their just work. He hopes that the Commission will understand that 790 is not going to absorb anymore blows to its paycheck without it being shared by anyone else. They feel that they have a right to elevate their positions as well as everyone else. He hopes that the Commission understands their position in the coming future and future budget.

Commissioner Bierman was troubled by some of the testimonies. In her experience, by the time people get themselves to testify in a public fashion and before a public body, they are pretty upset. She asked the director to investigate and report back.

Executive Director Wong replied that he will look into the matter and will have a full report at the next Commission meeting.

Commissioner Brandon indicated that it sounds like it's happening across the Port. It's not in just one division. She asked staff to look at the grievance procedures and handling the claims. It doesn't sound like Personnel is working very well with certain employees. She would like to know what's going on and what will be done to make it better.

Senaite Shifferaw pointed out the cruel way that she was treated and the insensitive way

that they levied her layoff after being struck by a car. The Port has her medical reports. She was suffering from postpartum stress disorder but within three days, they asked her to clear up her cubicle because the 1450 that is going to replace her has a right to come back to her job. Cruelty, insensitivity might not be against the law but they are against the law of nature. They are working with stonehearted people that need to take a look at themselves very carefully.

ACTION: Commissioner Brandon moved approval; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor; Resolution No. 04-15 was adopted.

7. NEW BUSINESS/PUBLIC COMMENT

Commissioner Wilfred Hsu indicated that when a former colleague, Commissioner Alioto-Pier was appointed to the Board of Supervisors, she vacated a seat on the Port/BCDC Fisherman's Wharf Planning Committee. He has appointed Commissioner Sue Bierman and she has accepted the appointment to the BCDC/Port Fisherman's Wharf Planning Committee.

Ernestine Weiss advised the Commission that she has been after the Department of Public Works to remove the concrete blocks on the Art Commission ribbon and they have done so after going through some roadblocks. She requested the Port to demolish the concrete benches. Last night at the Pier 27-31 meeting, she spoke to Dan Hodapp and was informed that they have to wait until Pier 1-½, 3 and 5 is finished to remove the benches. That project is two years down the road. The skateboarders have been driving Golden Gateway people nuts for a long time. It has to stop. She asked the Port to either put steel benches at ferry park or along the waterfront. She asked the Port to either fence it in or put the steel bars on or demolish them immediately. It's an eyesore and it's dangerous. People cannot walk along that section of Embarcadero. It's up to the Port to do something about it and move in that direction. They've waited long enough.

Commissioner Bierman asked staff to look into what Ms. Ernestine is talking about.

Commissioner Hsu directed the Executive Director, in light of the operating budget and capital plan budget, to look into and also make a recommendation on the organization and structure of staff based on best practices and approach to effectuate operating efficiencies in all areas of the organization and report back in 30 days.

8. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

At 4:35 p.m. the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion Item)

a. Discuss existing litigation matter pursuant to California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- In re Pacific Gas and Electric Company, United States Bankruptcy Court, Northern District of California, San Francisco; Case No. 01 30923 DM.

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Pier 26
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*International Museum of Women (IMOW): Elizabeth Colton

b. Property: Seawall Lot 3030
Person Negotiating: Port: Peter Dailey, Maritime Director
*GP Resources: Andrew Zar

c. Property: Pier 33-½
Person Negotiating: Port: Ken Winters, Real Estate Director
*California Foundation on the Environment: Pat Mason

d. Property: Pier 64.5
Person Negotiating: Port: Ken Winters, Real Estate Director
*Kelly's Mission Rock: Jim Kelly

e. Property: Seawall Lot 349
Person Negotiating: Port: Ken Winters, Real Estate Director
*Dept. of Parking & Traffic: Steve Bell

f. Property: Pier 50, Shed A
Person Negotiating: Port: Ken Winters, Real Estate Director
*Operation USA: Michael Walden

9. RECONVENE IN OPEN SESSION

At 6:15 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Brandon moved approval to adjourn executive session and reconvene in open session; Commissioner Hardeman seconded the motion. All of the

Commissioners were in favor.

ACTION: Commissioner Hardeman moved approval to not disclose any information discussed in executive session; Commissioner Brandon seconded the motion. All of the Commissioners were in favor.

10. ADJOURNMENT

ACTION: Commissioner Brandon moved approval to adjourn the meeting; Commissioner Hardeman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 6:17 p.m.

SAN FRANCISCO PORT COMMISSION

Wilfred Hsu, President
Michael Hardeman, Vice President
Kimberly Brandon, Commissioner
Sue Bierman, Commissioner

Douglas F. Wong, Executive Director
Phone: 415-274-0400; Fax: 415-274-0412

Amy G. Quesada, Commission Secretary
Phone: 415-274-0406; Fax: 415-274-0412

AGENDA

REGULAR MEETING
3:00 P.M., TUESDAY, FEBRUARY 24, 2004
PORT COMMISSION HEARING ROOM, 2ND FLOOR
FERRY BUILDING, SAN FRANCISCO, CA 94111

The Port Commission Agenda as well as Staff Reports/Explanatory Documents available to the public and provided to the Commission are posted on the Port's Website at www.sfport.com.

DOCUMENTS DEPT.

FEB 19 2004

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02-19-04P03:

1. **ROLL CALL**

2. **APPROVAL OF MINUTES** - February 10, 2004 Meeting

3. **EXECUTIVE**

   A. Executive Director's Report
      - 2003 Combined Charities Campaign

4. **CONSENT**

   A. Request for approval of First Amendment to Lease No. L-13448 with the California Foundation on the Environment and the Economy. (Resolution No. 04-17)

   B. Request for approval of a new Month-to-Month Lease with Operation USA, a California Non-Profit Corporation, Lease No. L-13611 (Resolution No. 04-18)

5. **ENGINEERING & MAINTENANCE**

   A. Request for approval to execute a Contract Service Order with Parsons, Brinckerhoff, Quade and Douglas, Inc. to provide professional engineering services for Pier 35 Security Enhancement Project in the amount not to exceed $225,000. (Resolution No. 04-19)

6. **MARITIME**

A. Request for approval of the Second Amendment to Lease No. L-12839 with Hanson Aggregates Mid- Pacific, Inc. at Seawall Lot 352. (Resolution No. 04-20)

7. **REAL ESTATE**

A. Approval of Second Amendment to and Restatement of Lease No. L-12175 with Hornblower Yachts, Inc. for Real Property and Exclusive Berthing Rights at Pier 3.

Approval of Second Amendment to and Restatement of Lease No. L-10421 with Ferryboat Santa Rosa Partners, Ltd. for Real Property and Exclusive Berthing Rights at Pier 3.

Approval of an Amendment to and Restatement of Lease No. L-12501 with Hornblower Yachts, Inc. for Real Property and Exclusive Berthing Rights at Piers 31-½ and 33 (Resolution 04-16).

8. **NEW BUSINESS/PUBLIC COMMENT**

Public comment is permitted on any matter within Port jurisdiction and is not limited to agenda items. Public comment on non-agenda items may be raised during New Business/Public Comment. A member of the public has up to three minutes to make pertinent public comments before action is taken on any agenda item and during the new business/public comment period. It is strongly recommended that public comments be submitted in writing so they can be distributed to the Commissioners for their review. Please fill out a speaker card and hand it to the Commission Secretary. If you have any question regarding the agenda, please contact the Commission Secretary at 274-0406.

9. **EXECUTIVE SESSION**

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion Item)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016. (Discussion Item)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Seawall Lot 3030
Person Negotiating: Port: Peter Dailey, Maritime Director
*GP Resources: Andrew Zar

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at SWL 3030.

b. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Marine Terminals Corporation (MTC): Ken Passe

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Pier 80.

c. Property: Piers 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*Piers 27-31 LLC: Steve Jacobsen

Under Negotiation: _____ Price _____ Terms of Payment __X__ Both
An executive session has been calendared to give direction to staff regarding real estate negotiations for Port property located at Piers 27-31.

d. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*Prospective Bidder(s)

Under Negotiation: ___ Price ___Terms of Payment X Both
An executive session has been calendared to give direction to staff regarding Request for Proposals for Port property located at Pier 70.

10. RECONVENE IN OPEN SESSION

A. Possible report on actions taken in closed session pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

B. Vote in open session on whether to disclose any or all executive session discussions pursuant to Government Code Section 54957.1 and San Francisco Administrative Code Section 67.12.

11. ADJOURNMENT

FEBRUARY/MARCH 2004
CALENDAR OF UPCOMING PORT MEETINGS - OPEN TO THE PUBLIC

Date	Time	Group	Location
February 24	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
March 9	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**
March 23	**3:00 p.m.**	**Port Commission**	**Port Commission Room @ Ferry Building**

NOTES:

The San Francisco Port Commission meets regularly on the 2nd and 4th Tuesday of the month at 3:00 p.m., unless otherwise noticed. ***The Commission Agenda and staff reports are posted on the Port's Website @ www.sfport.com.*** Contact Amy Quesada at 274-0406.

The Brannan Street Wharf Citizens Advisory Committee meets on an as-needed basis to develop a concept plan for this planned open space in the South Beach area. Meetings are held in the Bayside Conference Room at Pier 1. Contact Dan Hodapp @ 274-0625 or dan_hodapp@sfport.com

The Cruise Terminal Environmental Advisory Committee generally meets the third week of each month. Date and time to be determined. Contact Michael Nerney at 274-0416.

The Environmental Quality Advisory Committee (EQAC) meets regularly on the fourth Thursday of the month at 9:00 a.m. at Scoma's Restaurant, Pier 47 @ Fisherman's Wharf. Contact Jay Ach @ 274-0562.

The Fisherman's Wharf Waterfront Advisory Group meets regularly on the 3rd Tuesday of the month. The regular meeting time and place is 9:00 a.m. at Scoma's Restaurant, Pier 47 at Fisherman's Wharf. Contact Kirk Bennett @ 274-0545.

The Maritime Commerce Advisory Committee (MCAC) meets on a bi-monthly basis, on the third Thursday of the month, from 11:30 a.m. to 1:30 p.m. @ Pier 1. Contact Jill Rodby @ 274-0519.

The Mission Bay CAC meets regularly on the 2nd Thursday of the month, from 5:30 to 7:30 p.m. at the Mission Bay Visitor Center (255 Channel Street). Contact Tiffany Bohee at 749-2481 for more information.

The Northeast Waterfront Advisory Group meets regularly on the 1st Wednesday of the month at 4:00 p.m. in the Bayside Conference Room @ Pier 1. Contact Kirk Bennett @ 274-0545.

The Pier 70 Advisory Group meets monthly on an as-needed basis generally on the 2nd Wednesday of the month from 4 to 6 p.m. at the Potrero Campus of the California College of Arts and Crafts, Board Room, 1111 – 8th Street between Irvin and Hooper. Contact Mark Paez @ 705-8674.

The Rincon Point-South Beach CAC meets regularly on the 3rd Monday of the month, from 5:00-7:00 p.m. at the South Beach Yacht Club (Pier 40 on The Embarcadero). Contact Tiffany Bohee at 749-2481 or 749-2400 for more information.

The Southern Waterfront Advisory Committee (SWAC) meets every 1st Wednesday of the month from 6:15 to 8:15 p.m. Location to be determined. Contact David Beaupre @ 274-0539 or david_beaupre@sfport.com.

The Waterfront Design Advisory Committee meets the 3rd Tuesday of the month from 11 a.m. to 1 p.m. in the Bayside Conference Room @ Pier 1. Contact Dan Hodapp @ 274-0625.

Port Website: Check out the Port's Website at **www.sfport.com.**

ACCESSIBLE MEETING INFORMATION

Ferry Building: The Port Commission Hearing Room is located on the second floor of the Ferry Building. The main public entrance is from the west (Embarcadero) side and is served by a bank of elevators adjacent to the historic staircase. Accessible public restrooms are on the first floor at the northeast end of the building as well as on the second floor across the lobby from the Port Commission Hearing Room. The main path of travel to the Port Commission Hearing Room is equipped with remote infrared signage (Talking Signs). The Port Commission Hearing Room is wheelchair accessible. Accessible seating for persons with disabilities (including those using wheelchairs) is available. The closest accessible BART and MUNI Metro station is Embarcadero located at Market & Spear Streets. Accessible MUNI lines serving the Ferry Building area are the F-Line, 9, 31, 32 and 71. For more information about MUNI accessible services, call (415) 923-6142.

The nearest accessible parking is provided in the following off-street pay lots:

A) 3 spaces in the surface lot on the west side of the Embarcadero at Washington St.
B) 3 spaces in the Pier 1/2 lot, located on the east side of the Embarcadero between the Ferry Building and Pier 1. During business hours this lot is operated by valets
C) Hourly and valet parking in the Pier 3 lot. This lot is accessed through the Pier 3 bulkhead building entrance on the east side of the Embarcadero. This lot is located on the pier deck; adjacent to the ferry boat Santa Rosa.

Additional covered accessible off-street pay parking is available in the Golden Gateway Garage, which is bounded by Washington, Clay, Drumm and Battery Streets. Entrance is on Clay St. between Battery and Front Streets. There is no high-top van parking. Metered street parking is available on the Embarcadero, Washington St., Folsom St. and Drumm St.

Pier 1:
The Port's fully accessible offices are in the west end of Pier 1. There are two public entrances; the main entrance on the west (Embarcadero), and the Port History walk entrance on the south apron. Each of these entrances is provided with an automatically operated door. Both entrances lead to the Bayside conference rooms. Accessible public restrooms, drinking fountains, payphone and TTY are on the first floor near the main entrance. The public spaces of the Port's offices are equipped with remote infrared signage (Talking Signs) identifying all primary entrances, paths of travel, meeting rooms and amenities. Accessible seating areas and assistive listening devices will be available in the Bayside Conference rooms.

Accessible meeting information policy:
In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals. A sign language interpreter and alternative format copies of meeting agendas and other materials can be provided upon request made at least 72 hours in advance of any scheduled meeting. Contact John Scott, Port's ADA Coordinator, at 274-0571. The Port's TTY number is (415) 274-0587.

Know Your Rights Under the Sunshine Ordinance. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact Donna Hall by mail: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102, by phone at (415) 554-7724, by fax at (415) 554-7854 or by email at Donna.Hall@sfgov.org. Citizens may obtain a free copy of the Sunshine Ordinance by contacting Ms. Hall or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at http://www.sfgov.org/sunshine.htm

Lobbyist Registration and Reporting Requirements. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (SF Campaign & Government Conduct Code §2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Van Ness, Suite 3900, San Francisco, CA 94102, phone (415) 581-2300 or fax (415) 581-2317; web site: www.sfgov.org/ethics.

PORT OF SAN FRANCISCO

MEMORANDUM

February 18, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon, Commissioner
Hon. Sue Bierman, Commissioner

FROM: Douglas F. Wong
Executive Director

SUBJECT: Request for Approval of First Amendment to Lease No. L-13448 (Resolution No. 04-17)

DIRECTOR'S RECOMMENDATION: Approve First Amendment to Lease No. L-13448 for the California Foundation on the Environment and the Economy.

BACKGROUND:

On June 1, 2003, the California Foundation entered into a three (3) year lease with the Port for approximately six hundred and thirty five (635) square feet of office space located at Pier 33 North for the amount of nine hundred and fifty two dollars and fifty cents ($952.50) per month. The lease provided for a carpet credit. During the installation of the carpet, tenant and Port discovered an unforeseen deterioration in the sub-floor that required the replacement of the sub-floor and supporting beams to the mezzanine. As a result of the repair work, the tenant took possession of the premises on December 1, 2003, six (6) months after the original Rent Commencement Date under the Lease.

Tenant has completed all necessary work in order to bring the premises up to a habitable state.

STAFF RECOMMENDATION:

Staff recommends that the Port Commission approve the First Amendment to Lease No. L-13448.

Prepared by: Richard A. Rovetti, Commercial Leasing Manager

THIS PRINT COVERS CALENDAR ITEM NO. 4A

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-17

WHEREAS, Section B3.581 of the Charter of the City and County of San Francisco empowers the San Francisco Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Jurisdiction; and

WHEREAS, On June 1, 2003, the California Foundation entered into a three (3) year lease with the Port for approximately 635 square feet of Office space located at Pier 33 North; and

WHEREAS, During tenant improvement work it was discovered that the interior sub-floor was in a state of deterioration requiring immediate replacement; and

WHEREAS, Tenant has completed all necessary sub floor repair work on the premises; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves the First Amendment to Lease No. L-13448 which moves the Rent Commencement Date from June 1, 2003 to December 1, 2003.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 24, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

February 18, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon, Commissioner
Hon. Sue Bierman, Commissioner

FROM: Douglas F. Wong DW
Executive Director

SUBJECT: Request for approval of a new month to month Lease with Operation USA, a California Non-Profit Corporation, Lease No. L-13611 (Resolution No. 04-18)

DIRECTOR'S RECOMMENDATION: Approve new month to month Lease with Operation USA, a California Non-Profit Corporation, Lease No. L-13611.

BACKGROUND:
Operation USA, a California non-profit corporation, provides worldwide relief by donating medical and related supplies to needing communities. On October 1, 2000, Operation USA entered into a month to month lease with the Port pursuant to Commission approval for approximately 1,200 square feet of shed space located in the Maintenance and Repair Building at Pier 96. Base Rent was $.11 per square feet per month.

Port staff now wishes to relocate Operation USA to Pier 50, Shed A, under a similar rate structure of $.11 per square foot and increase their premises to approximately 4,926 square feet. Recent increase for Shed Space at Pier 96, Maintenance and Repair Building justifies relocating Operation USA. Current market rates at Pier 96, Maintenance and Repair Building are $0.65 per square feet. By relocating Operation USA, Port staff expects an increase in revenues up to $20,000 per month.

Currently, the Port has leased 30,000 square feet of yard space to Mitchell Engineering and are in negotiations with Mitchell Engineering and other similar construction related companies for yard space, interior shed space, as well as office space located at Pier 96 Administration Building.

STAFF RECOMMENDATION:
Staff recommends that the Port Commission approve this new month to month Lease with Operation USA, Lease No. L-13611.

Prepared by: Richard A. Rovetti, Commercial Leasing Manager

THIS PRINT COVERS CALENDAR ITEM NO. 4B

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-18

WHEREAS, Section B3.581 of the Charter of the City and County of San Francisco empowers the San Francisco Port Commission with the authority and duty to use, conduct, operate, maintain, manage, regulate and control the lands within Port Jurisdiction; and

WHEREAS, Operation USA, a California non-profit corporation, provides worldwide relief by donating medical and related supplies to needing communities; and

WHEREAS, On October 1, 2000, Operation USA entered into a month to month lease with the Port pursuant to Commission approval for approximately 1,200 square feet of shed space located in the Maintenance and Repair building at Pier 96; and

WHEREAS, In order to maximize potential revenues at Pier 96, Maintenance and Repair Building, Port staff wishes to enter into a new month to month lease with Operation USA at Pier 50, Shed A, for approximately 4,926 square feet of shed space at $.11 per square foot; now therefore be it

RESOLVED, that the San Francisco Port Commission hereby approves this month to month lease with Operation USA, a California non-profit corporation, Lease No. L-13611.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 24, 2004.

_____
Secretary

PORT OF SAN FRANCISCO

MEMORANDUM

February 18, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Sue Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval to execute a Contract Service Order with Parsons, Brinckerhoff, Quade and Douglas, Inc. to provide professional engineering services for the Pier 35 Security Enhancements Project in the amount not to exceed $225,000.

DIRECTOR'S RECOMMENDATION: AUTHORIZE STAFF TO EXECUTE A CONTRACT SERVICE ORDER WITH PARSONS, BRINCKERHOFF, QUADE AND DOUGLAS, INC. TO PROVIDE PROFESSIONAL ENGINEERING SERVICES FOR THE PIER 35 SECURITY ENHANCEMENTS PROJECT IN THE AMOUNT NOT TO EXCEED $225,000.

Background:
On July 16, 2003, the San Francisco Port Commission authorized the award of an "As-Needed Engineering and Environmental Services" Contract to Parsons, Brinckerhoff, Quade and Douglas, Inc. (PB), for professional engineering services at a cost not to exceed $1,000,000. Also, at the same meeting, the San Francisco Port Commission authorized the Chief Harbor Engineer to issue separate Contract Service Orders under this contract without Commission approval in the maximum amount of $75,000.

Introduction:
In June 2003, the Transportation Security Administration (TSA) awarded a grant to the Port of San Francisco in the amount of $3,475,000, of which $3,150,000 is earmarked for security improvements to the cruise ship terminal at Pier 35. The scope of this project includes:

- A new entrance lobby, designed to screen and process passengers closer to the front of the facility

This Print Covers Calendar Item No. 5A

- Camera surveillance system, alarm system and intrusion detection system
- Exterior waterside lighting to deter waterside access to the facility
- State-of-the-art passenger and baggage scanning equipment
- Containment barriers/lockable partitions to segregate and channel personnel heading to and from passenger ships

The preliminary design work for this project was commenced last December. After careful evaluation of the project's scope and schedule, the Port Engineering staff determined that existing staff resources are insufficient for preparing design and specifications for this project because of following reasons:

- Port Engineering lacks the available expertise to prepare contract drawings and specifications for security enhancement elements of this project.
- Port Engineering does not have adequate staff to complete this project within the required grant schedule. The Engineering staff is engaged in other work of the same priority.

Port staff contacted other City departments to seek assistance in completion of the work in a timely manner by qualified staff in other City departments. However, none of these departments expressed interest in performing this work.

Consequently, Port staff requested that its existing consultant, the Parsons Brinckerhoff, Quade and Douglas, Inc. (PB), provide the necessary engineering services for this project. To achieve the project's goal as efficiently as possible, staff seeks to issue a second Contract Service Orders under the "As-Needed Engineering and Environmental Services" Contract with PB.

First Contract Service Order:
On December 18, 2003, the Port issued the first Contract Service Order (CSO) to Parsons Brinckerhoff, Quade and Douglas, Inc. for $74,929.55, to initiate architectural and engineering services for the Pier 35 Security Enhancements. The scope of work under this CSO was as follows:

- Assess the scope of the project to incorporate security enhancements while maximizing the flexibility of, and minimizing mechanical/electrical/plumbing upgrades to, the facility.
- Proceed with the design services that are not impacted by the scope assessment and/or are critical to follow-on activities (e.g., exterior lighting, historical resources report, security camera system)
- Assist the Port in coordinating with TSA regarding compliance with Grant requirements.

This pending work is funded through the existing TSA grant, and should be completed by end of March 2004.

Second Contract Service Order:
Port staff is seeking authorization to issue a second CSO to the Parsons Brinckerhoff, Quade and Douglas, Inc. (PB) for $225,000, to provide further architectural and engineering services for the Pier 35 Security Enhancements. The scope of work under this CSO is as follows:

- Provide programming, concept design, and final design of the facility alterations to accommodate passenger arrival and departure screening.
- Provide screening and security programming (passenger flow diagrams), examine the functionality of space requirements and layout for screening and security components of the facility.
- Provide concept design and final design of a digital camera security system.
- Provide concept and final design for an exterior lighting system
- Provide historic preservation architectural consulting services to identify and record those historical features of the facility that will be altered, including recommendations for the retention and preservation of historical features.
- Provide architectural design services and documents to construct the intended upgrades/enhancements in a manner best-suited to the TSA Grant, project's schedule and budget.
- Provide concept design for the mechanical, electrical, plumbing, telecommunications, power, lighting, emergency power, fire sprinkler, and other fire protection systems components of the security-related facility alterations.
- Provide concept design and final design for the structural components (e.g., lighting/partition/storefront/raceway supports) of the security-related alterations.
- Provide a construction cost estimate for each phase of the work.
- Provide construction support services during construction phase.

These architectural and engineering services will be funded through the existing TSA grant. The design of this project will be completed by June 30, 2004. Should the Port not be able to execute this Contract Service Order under this as-needed Contract with Parsons, Brinkerhoff, Quade and Douglas, Inc., Port will not meet the grant deadline.

Summary:
Port staff requests that the Port Commission authorize the Chief Harbor Engineer to issue the second Contract Service Order with Parsons, Brinckerhoff, Quade and Douglas, Inc. to provide professional engineering services for the Pier 35 Security Enhancements Project in the amount not to exceed $225,000.

Prepared by: Mojgan Yousefkhan, Project Manager,
For Ed Byrne, Acting Chief Harbor Engineer

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-19

WHEREAS, on July 16, 2003, the San Francisco Port Commission authorized the award of an "As-Needed Engineering and Environmental Services" Contract to Parsons, Brinckerhoff, Quade and Douglas, Inc., to provide professional engineering services at a cost not to exceed $1,000,000; and

WHEREAS, on July 16, 2003, the San Francisco Port Commission authorized the Chief Harbor Engineer to issue separate Contract Service Orders under this contract without Commission approval in the maximum amount of $75,000; and

WHEREAS, in June 2003, the Transportation Security Administration (TSA) awarded a grant to the Port of San Francisco in the amount of $3,475,000, of which $3,150,000 is earmarked for security improvements to the cruise ship terminal at Pier 35; and

WHEREAS, Port staff is unable to perform the required work due to lack of specialized technical expertise in the required engineering field, and the lack of adequate resources to meet grant's sensitive schedule; and

WHEREAS, On December 18, 2003, the Port issued a Contract Service Order (CSO) to Parsons Brinckerhoff, Quade and Douglas, Inc. for $74,929.55, to initiate architectural and engineering services for the Pier 35 Security Enhancements; and

WHEREAS, Port needs to issue a second CSO under this contract, as described in the staff report accompanying this resolution, to meet the grant deadline and complete the project in an efficient manner; now therefore, be it

RESOLVED, that the San Francisco Port Commission hereby authorizes the Chief Harbor Engineer to issue a second Contract Service Order to Parsons, Brinckerhoff, Quade and Douglas, Inc., to provide professional engineering services for Pier 35 Security Enhancements Project in the amount not to exceed $225,000.

I hereby certify that the forgoing resolution was adopted by the San Francisco Port Commission at its meeting of February 24, 2004.

_____
SECRETARY

PORT OF SAN FRANCISCO

MEMORANDUM

February 18, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Sue Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of the Second Amendment to Lease No. L-12839 with Hanson Aggregates Mid- Pacific, Inc. at Seawall Lot 352

DIRECTOR'S RECOMMENDATION: APPROVE THE SECOND AMENDMENT TO HANSON AGGREGATES MID-PACIFIC LEASE NO. L-12839 AT SEAWALL LOT 352

Background

Hanson Aggregates Mid-Pacific (Hanson) operates a maritime sand reclamation and distribution and storage facility using a barge and conveyor system at Seawall Lot 352 under Lease No. L-12839 that commenced on October 6, 1999 was modified by an amendment dated October 12, 2001 and terminates on February 28, 2004. The lease includes 190,230 square feet of unpaved land at Seawall Lot 352. Hanson and Port recommend the following amendment to the lease:

Term: The term of the agreement will be extended for five years commencing on March 1, 2004 and terminating on February 29, 2009. It will also include three five-year options to extend the term. Hanson may exercise each option to extend by giving written notice to the Port not less than sixty (60) days prior to the expiration of the immediately prior term. Port retains the right to reject the options if any material event of default occurs during the term of lease. Port can also reject the options if the mitigation measures, as shown in Exhibit B to the attached Second Amendment have not been completed in a timely matter, as determined solely by the Port.

Base Rent Revision: Wharfage has been added to the Base Rent Section. In addition to the Base Rent of $38,225.81 per calendar month, tenant shall pay Wharfage to the Port each month at the rate of seventy-nine ($0.79) per metric ton of sand and/or aggregate discharged by or on behalf of Tenant at facility. Tenant shall pay Wharfage to the Port only to the extent that the amount by which the Wharfage due for each Lease Year exceeds the Base Rent previously paid by Tenant for said Lease Year.

This Print Covers Calendar Item No. **6A**

The Base Rent is subject to an annual CPI increase and the wharfage is subject to adjustment at the same percentage and at the same time as those increases authorized by the California Association of Port Authorities for the Port's Tariff No. 4. At each extension term, Base Rent will be readjusted to the greater of CPI or market rates as determined by Port. If Tenant disagrees with Port's market rent determination, the matter will be submitted to arbitration as set forth in the second amendment.

Local Trucking: The Local Trucking clause has been amended to reflect new language that requires the reporting of local trucking to be provided to the Port in terms of revenue instead of tonnage.

Subsequent Mitigation Measures: Subsequent Mitigation Measures, as identified in the Southern Waterfront SEIR, have been added to the lease providing for stricter controls on air and water quality. Included in these measures is the program for dust abatement, which requires tenant to install a truck wheel-washing system as well as daily street sweeping on streets surrounding the facility.

Infrastructure Improvements: The Tenant agrees to make a one time payment to the Port in the amount of $165,880.56, which Port shall allocate toward the construction of the Illinois Street Intermodal Bridge, the "Gateway Project" or other as yet-to-be defined projects.

A copy of the Second Amendment is attached hereto.

Prepared by: Jill Simpson-Rodby, Maritime Marketing Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-20

WHEREAS, Hanson Aggregates Mid-Pacific, Inc. entered into Lease No. L-12839 with the Port dated for reference purposes only as of October 6, 1999, and as modified by an amendment dated October 12, 2001 affecting approximately 190,230 square feet of unpaved land at Seawall Lot 352; and

WHEREAS, Port and Tenant desire to extend the Term of the Lease to expire on February 29, 2009 with three (3) five-year options to extend; and

WHEREAS, Port and Tenant have agreed to add wharfage payments to the Base Rent subject to any increases in the Port's Tariff No. 4; and

WHEREAS, Port and Tenant have agreed to add Subsequent Mitigation Measures to the lease as required under the Southern Waterfront SEIR; and

WHEREAS, Port and Tenant have agreed to the revised Local Trucking language; and

WHEREAS, Tenant has agreed to make a one time payment to the Port in the amount of $165,880.56, which Port shall allocate toward the construction of the Illinois Street Intermodal Bridge, the "Gateway Project" or other as yet-to-be defined projects; therefore

RESOLVED, that the San Francisco Port Commission hereby approves the Second Amendment to Hanson Aggregates Mid-Pacific, Inc. Lease No. L-12839 in accordance with the terms set forth in the Memorandum to Port Commissioners dated February 18, 2004 for Calendar Item No. 6A, substantially in the form on file with the Port Commission Secretary, and hereby authorizes and directs the Executive Director or his designee to execute the Second Amendment in such final form as is approved by the Executive Director or his designee in consultation with the City Attorney.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 24, 2004.

_____
Secretary

SECOND AMENDMENT TO ORIGINAL LEASE No. L-12839 BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO, THROUGH THE SAN FRANCISCO PORT COMMISSION, Landlord,

And

HANSON AGGREGATES MID-PACIFIC, INC., A DELAWARE CORPORATION, Tenant

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This Second Amendment to Lease No. L-12839 ("**Second Amendment**") is dated for reference purposes only as of February 25, 2004, between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), operating by and through the SAN FRANCISCO PORT COMMISSION ("**Port**"), and Hanson Aggregates Mid-Pacific, Inc. ("Hanson"), a Delaware corporation, (the "**Tenant**").

RECITALS

WHEREAS, By Lease Agreement dated for reference purposes only as of October 6, 1999, and as modified by an amendment dated October 12, 2001 (collectively, the "Lease") Hanson, as tenant, entered into a lease with Port, as landlord, affecting approximately 190, 230 square feet of unpaved land at Seawall Lot 352, in the City and County of San Francisco (the "Premises") as more particularly described in the Lease.

WHEREAS, Port and Tenant desire to extend the Term of the Lease an additional five years through February 29, 2009 with three five-year options; and

WHEREAS, Port and Tenant desire to make other modifications to the terms and conditions of the Lease, as set forth in this Second Amendment.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Port and Tenant, hereby agree as follows:

1. Effective Date. This Second Amendment shall become effective on March 1, 2004

2. Term. As of the Effective Date, Section 1.2 (Term) shall be amended in its entirety to read as follows:

> "**1.2 Term**: The Term of this Lease shall terminate on February 29, 2009 ("Termination Date"), unless earlier terminated in accordance with the provisions of this Lease.
>
> a. **Extension Options:** Subject to Port's rights to terminate the Lease as provided under this lease, Port grants to Tenant three (3) options to extend the Term of this Lease (each, an "Extension Option"), each for an additional five (5) years (the "Extended Terms"). Tenant may elect to exercise each Extension Option by giving written notice to Port, not less than ninety (90) days prior to the expiration of the immediately prior Term or Extended Term (as applicable), that Tenant elects to exercise the applicable Extension Option. Any such notice by Tenant shall be irrevocable by Tenant. If any material event of default by Tenant is outstanding under this lease either at the time Tenant submits its written notice exercising the Extension Option or at any time prior to the first day of the applicable Extended Term, or if any event has occurred

which, with the giving of notice or passage of time or both, would constitute a material event of default and such event has not been cured prior to the earlier expiration of any applicable cure period under this Lease or the expiration of the immediately prior term or Extension Term (as applicable), then Port may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option (and any subsequent Extension Option) shall be null and void. Port and Tenant specifically agree that, in addition to Port's right to reject Tenant's exercise of the Extension Option as discussed herein, Port has the right to reject Tenant's exercise of any Extension Option if all requirements contained in Exhibit B have not been completed within a satisfactory and timely manner, to be determined in Port's sole discretion.

If Tenant elects to exercise one or more Extension Option, then the Lease for the Extended Term(s) shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease, except that Base Rent hereunder shall be adjusted in accordance with the following procedure:

Within thirty (30) days after Tenant's notice exercising each applicable extension term, Port shall notify Tenant in writing of the proposed new Base Rent for such extension term by using its good faith judgment based upon Port's maritime space rental parameters adopted by the Port Commission, as well as comparable maritime space in a comparable location in San Francisco, but in no event shall the Base Rent for the applicable extension term be less than the Base Rent as adjusted in accordance with Section 5.2 as of the commencement date of the applicable extension term (the "Fair Rental Value"). Port shall submit to Tenant its determination of Fair Rental Value for the Premises ("Port's Notice"). If Port and Tenant are unable to mutually agree on the Fair Rental Value within thirty (30) days after delivery of the Port's Notice to Tenant of its determination, then the Base Rent shall be set by appraisal, as provided below.

Within fifteen (15) days after the expiration of the thirty (30) day period specified above, each party, at its cost and by giving notice to the other party, shall appoint a real estate broker, duly licensed to work in San Francisco, with at least ten (10) years full-time commercial property experience representing tenants and/or landlords of comparable space in the City of San Francisco to prepare an appraisal of the Fair Rental Value of the Premises. If a party does not appoint a broker within such fifteen (15) day period, the single broker appointed shall be the sole broker and shall prepare an appraisal of the Fair Rental Value of the Premises based upon comparable use in the general vicinity of the Premises. Each broker shall conduct and submit to the party who retained him or her an independent appraisal within thirty (30) days after appointment. If the parties are unable to agree on the Fair Rental Value within thirty (30) days after receiving the appraisal(s), each broker shall notify the other in writing of its final appraisal for purposes of determination of Fair Rental Value in accordance herewith and the parties shall attempt to elect a third broker meeting the qualifications stated in this paragraph. If they are unable to agree on the third broker, either party, by giving ten (10) days' notice to the other party, may file a petition with the American Arbitration Association solely for the purpose of selecting a third broker who meets the qualifications stated in this paragraph. If a party suggests the name of a third broker to the arbitration service, the party also shall submit a declaration by the proposed third broker disclosing any work performed by such broker for either party, any entity related to either party, or their attorneys, principals or officers, and any relationship between the third broker and either party that could reasonably be construed as a conflict of interest. The parties hereby waive any right to challenge the selection of the third broker, whether by the agreement of the first two arbitrators, or by the arbitration service, for any reason other than fraud, corruption or undue influence, and the parties expressly waive any

right to challenge the third broker based upon a conflict of interest by reason of work the third broker has performed for either party, any entity related to either party, or their respective attorneys, principals or officers, and any relationship between the third broker and either party that could reasonably be construed as a conflict of interest. Notwithstanding the foregoing, neither party waives any challenge for a conflict of interest based on work performed by the third broker for either party, any entity related to either party, or their respective attorneys, principals or officers, and any relationship between the third broker and either party that could be construed as a conflict of interest, if the third broker fails to disclose such work to both parties in the declaration. Each party shall bear one-half (½) of the cost of any fee charged by the American Arbitration Association for appointing the third broker and one-half (½) of the third broker's fee.

Within thirty (30) days after selection of the third broker, the third broker shall determine the Fair Rental Value by selecting one or the other of the final appraisals established by the initial brokers. The determination of the Fair Rental Value by appraisal conducted in accordance herewith shall be conclusive, final and binding on the parties, except as provided in California Code of Civil Procedure Section 1286.2 (a), and (b) (as the same may be amended from time to time). Except as provided in California Code of Civil Procedure Section 1286.2(a) and (b) (as the same may be amended from time to time), the provisions of Title 9 of the California Code of Civil Procedure shall not have any application to the appraisal procedure set forth herein.

The greater of (1) the Fair Rental Value determined in accordance herewith, or (2) the Base Rent in effect immediately prior to the commencement date of the applicable extension term as adjusted in accordance with Section 5.2 hereof, shall be incorporated into the terms of the Lease for the applicable extension term.

3. **Base Rent Revision.** As of the Effective Date, Section 1.3 (Base Rent) shall be amended to add the following language:

"1.3 a. Base Rent: Commencing on March 1, 2004, Base Rent shall be $38,225.81 per calendar month. (Section 5.1)."

b. Wharfage: In addition to the Base Rent, Tenant shall pay Wharfage to the Port on a monthly basis at the rate of seventy-nine cents ($0.79) per metric ton of sand and/or aggregate discharged by or on behalf of Tenant at facility.

Notwithstanding the foregoing, monthly payments of wharfage, Tenant shall pay Wharfage to Port only to the extent that the amount by which the Wharfage due for each month exceeds the Base Rent payable by Tenant for said month, subject to annual adjustment as set forth in section 1.3.d hereof.

c. Payment and Reporting of Wharfage: On or before the 20th of each calendar month, commencing on April 20, 2004 and ending on the 20th day of the month following the month in which the Agreement expires or sooner terminates, Tenant shall submit to the Port a statement (the "Wharfage Statement") showing the amount of sand and/or aggregate discharged during the preceding month and showing the computation of Wharfage for the immediately preceding month. If the wharfage due for such month exceeds Base Rent due for such month, Tenant shall also submit with the Wharfage Statement payment of Wharfage for the month.

Tenant shall also pay a late fee for each month that Tenant fails to submit such

Wharfage Statement when due. The charge shall be calculated at the greater of 1% of the Base Rent or 1% of the Wharfage then due.

d. Annual Wharfage Adjustments: Wharfage shall be adjusted at the end of each Lease Year and following the expiration of the term in accordance with this section 1.3.d. For purposes hereof, a "Lease Year" will mean March 1 through February 28 during the term. By February 28 of each Lease Year, and by the thirtieth (30th) day following expiration of the term, Tenant shall deliver to Port a statement, certified by Tenant's Chief Financial Officer, Chief Operations Office, or equivalent, to be true and correct, setting forth: (1) Tenant's total amount of sand and/or aggregate discharged at facility by or on behalf of Tenant for the preceding Lease Year; (2) the full amount of Wharfage due to Port based on the total annual amount of aggregate discharged; (3) the amount of Base Rent actually paid by Tenant during such Lease Year; (4) the amount of Wharfage actually paid by Tenant during such Lease Year; and (5) the amount of any overpayment or underpayment of Wharfage for such Lease Year. At Port's option, overpayments may be either refunded to Tenant, applied to any other amount then due and unpaid, or applied to Base Rent due at the first opportunity during the new Lease Year. Underpayments shall accompany the annual statement of total Wharfage. Underpayments, which exceed 10% of the total Percentage Rent due for such Lease Year, shall be subject to a late charge of 1% of the amount of underpayment.

e. Adjustment of Rates Wharfage rates stated in Section 1.3 will be subject to adjustment at the same percentage and at the same time as those authorized by the California Association of Port Authorities for the Port's Tariff No.4.

6. **Local Trucking** As of the Effective Date, Section 38 (Local Trucking) shall be amended in its entirety to read as follows:

> **Local Trucking**. As a material consideration for Port's agreement to enter into this Lease, Tenant agrees that, for all directly contracted or service agreement trucking opportunities associated with Tenant's operations at the Premises, including, without limitation, hauling of materials on and off the Premises, Tenant shall make good faith efforts to first use local truckers (as defined below).
>
> For purposes of this Section, "truckers" means a business that provides trucking services for a profit (see additional terms and definitions below). "Local truckers" means those truckers that are certified by the San Francisco Human Rights Commission as "Local Business Enterprises" pursuant to the City's Minority/Women/Local Business Utilization Ordinance. (Administrative Code Section 12D.A.5.)
>
> To the extent that Tenant in its sole discretion directly contracts or enters into a service agreement with truckers for hauling of materials on or off the Premises, Tenant shall use Local Truckers for a minimum of 60% of all contracted or service agreement trucking. Only the actual dollar amount paid to truckers will be counted towards meeting the sixty percent (60%) requirement. Equipment rental and disposal fees will not be counted towards meeting the requirement. Notwithstanding the foregoing, if Tenant fails to meet the sixty percent (60%) threshold, Tenant shall not be in default of this provision so long as Tenant first offered trucking opportunities to local truckers, and such local truckers were unavailable or unwilling to haul materials to or from the Premises.
>
> Tenant shall provide Port with a monthly report setting forth the total cost to haul material onto or off of the Premises through a contract or service agreement during the preceding month and identify the total amount paid to local truckers by the Tenant. Tenant shall submit monthly reports to the Port and HRC for monitoring and compliance review. The monthly report shall document all truckers who conducted contract or service agreement work for the tenant, and identify those truckers, which meet HRC "Local Business Enterprise" requirements. If tenant fails to meet the 60% local trucker requirement, the monthly report shall document how good faith outreach efforts were employed to contact the local truckers and

reasons for why such work could not be conducted by HRC local truckers. Additionally Tenant shall provide the Port with any additional documentation required to ensure Tenants compliance with this provision.

Tenant's failure to comply with the provision of this Section shall be deemed a material breach under the Lease subject to default provision of Section 23 of this Lease.

7. Subsequent Mitigation Measures. As of the Effective Date, Section 16.7 shall comply with those subsequent improvement measures set forth in Exhibit B attached hereto . Failure to so comply shall be considered an event of default under the Lease, subject to the notice and cure requirements of section 23.1 hereof.

8. Infrastructure Improvements. A new Section 40 (Infrastructure Improvements) is hereby added to the Lease to read as follows:

40 Infrastructure Improvements. Port has begun identifying several projects for the Southern Waterfront including: (1) construction of a bridge across Islais Creek Channel one block east of the existing Levon Hagoop Nishkian drawbridge on Third Street ("Illinois Street Bridge"); (2) the design and construction of a so-called "Gateway" project to visually enhance the intersection of Third Street, Cargo Way, and Amador Street; (3) extension and improvement of Amador Street to connect Cargo Way and the Pier 94-96 terminal, and (4) other as yet-to-be defined projects.

The Illinois Street Bridge would extend across the Islais Creek Channel along the line of Illinois Street, connecting the Port's Container Terminal at Pier 80, on the north side of Islais Creek, with numerous Port facilities on the south side of Islais Creek including Piers 94-96, the Intermodal Container Transfer Facility, Piers 90-92 and the undeveloped backlands area. The Illinois Street Bridge would provide a more direct route for rail cargo to and from Pier 80, and create an alternate truck route to Port facilities on both sides of Islais Creek. This will reduce industrial truck traffic on Third Street.

The parties acknowledge that, as a material consideration of Port's agreeing to enter into this amendment of the Lease, Tenant has delivered to Port a one-time payment to the Port in the amount of $165,880.56, which Port shall allocate toward the construction of the Illinois Street Intermodal Bridge, the Gateway project, or other projects.

9. Section 29.5 (Burma (Myanmar) Bushiness Prohibition is hereby deleted in its entirety.

10. A new Section 29.5 (Contributions from Contractors) is hereby added to the Lease to read as follows:

29.5 Contributions from Contractors

(a) San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 1.126 prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

(b) San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective contractor or a City officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

This Second Amendment contains all of the representations and the entire agreement between the parties with respect to the subject matter herein. Except as otherwise modified by this Second Amendment, all terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, PORT and TENANT execute this First Amendment to the Lease No. L-13002 at San Francisco, California, as of the date first set forth above.

PORT:
CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, operating by and through the SAN FRANCISCO PORT COMMISSION

By_____
Peter Dailey
Director of Maritime

TENANT:
Hanson Aggregates Mid-Pacific, Inc., a Delaware corporation, jointly and severally

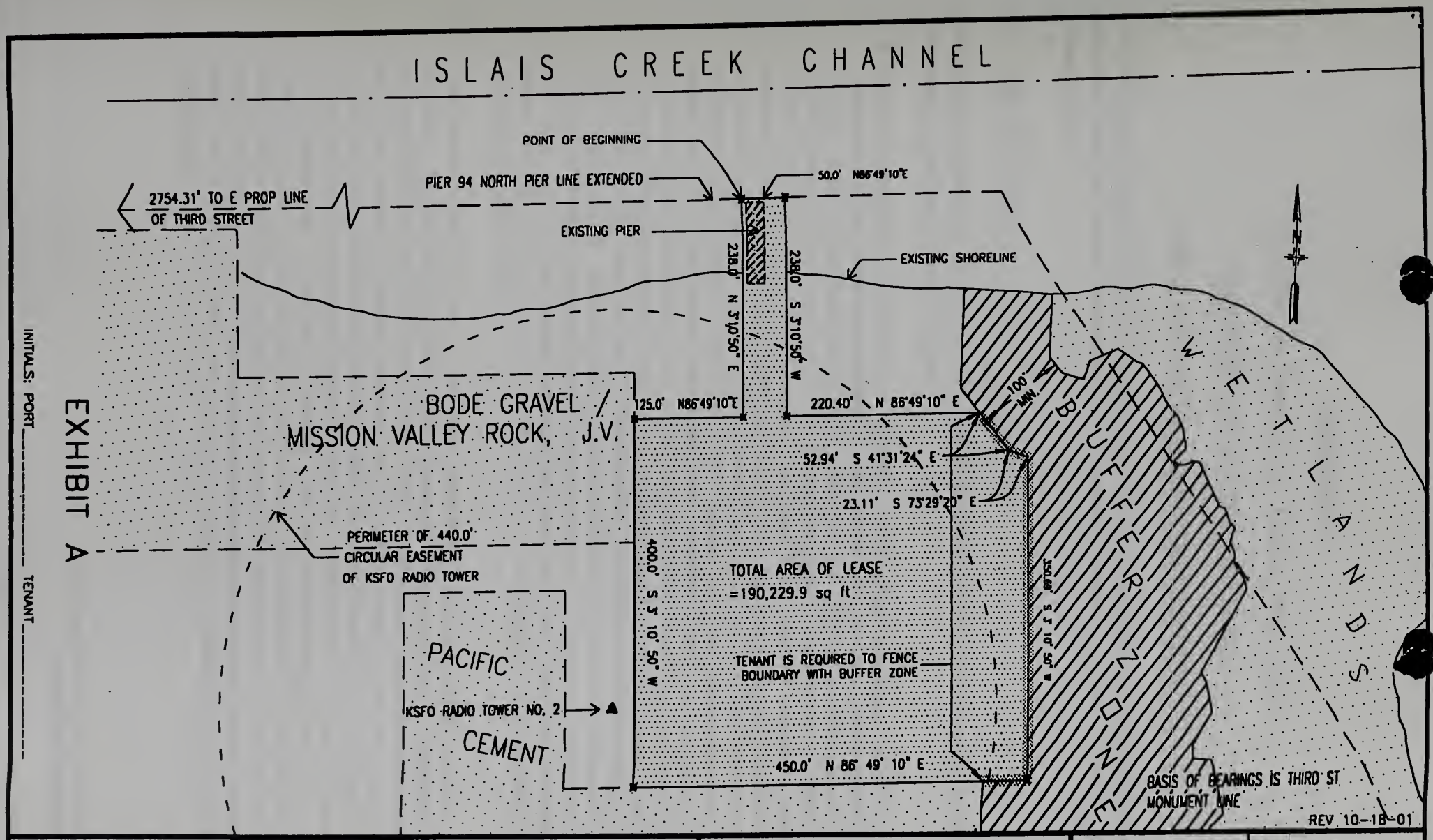
By _____ By _____

Its: _____ Its: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By_____
Deputy City Attorney

Amendment Prepared by: Jill Simpson-Rodby, Maritime Marketing Manager _____(initial)



LEASE NO. L-12839	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO	TENANT: HANSON AGGREGATES MID-PACIFIC, INC.	DRAWN BY: ECC, AMN; DATE: 10-18-01 CHECKED BY: PWILLIAMSON; SCALE: 1"=100' PLACE CODE NO. 3520-0-0001; SHEET NO. 1 OF 1 SHEETS

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EXHIBIT B

HANSON AGGREGATES – LEASE NO. L-12839

REQUIRED MITIGATION MEASURES

UNDER THE SOUTHERN WATERFRONT SEIR

The following contains the full text of the Southern Waterfront Supplemental EIR (SEIR) mitigation measures, which are required as conditions of the Hanson Aggregates Lease No. L-12839 located at Seawall Lot 352.

C. AIR QUALITY

The mitigation measures in this section would further reduce but not eliminate the project's contribution to potentially significant air quality impacts..

C.1 Each of the Industry Group construction aggregate industry project components, which would represent "stationary sources" of particulate emissions, shall include "best available control technology" (BACT) to control emissions, consistent with current regulations. For aggregate-handling operations (Bode Gravel, Mission Valley Rock, RMC Pacific, Hanson Aggregates), this includes maintaining a moisture content in the aggregate that is high enough to eliminate PM-10 "fugitive" emissions (wind-blown dust that could otherwise escape into the surrounding air). A water spray system shall be installed at each aggregate-handling facility, including Bode Gravel, Mission Valley Rock, RMC Pacific, and Hanson Aggregates. Fine aggregate material (sand) shall be maintained with a moisture content of approximately 5 percent, because such material with a moisture content of 4.5 percent or more produces virtually no fugitive emissions. Coarse aggregate (gravel) shall be kept damp on the surface, which would also effectively eliminate fugitive dust. Aggregate shall be stored in bunkers at ready-mix and asphalt plants, rather than open piles, with water spray (including the use of surfactants, as necessary, to bind the water and dust to the aggregate) applied to maintain adequate moisture content to control emissions at both production and shipping/storage operations. ISG Resources, which would handle fly ash, a finer, more powdery material than aggregate, shall install BACT dust collection equipment to accommodate truck and rail transport and shall use pneumatic equipment to control dust emissions during the transfer of fly ash.

C.3 Consistent with the City's Clean Air Program (established by Ordinance 258-99, adopted October 15, 1999), it is City policy to "foster, promote, and encourage the use of low emission [alternative fuel vehicles] and [zero emission vehicles] by developing infrastructures to support the use of these vehicles." Under the ordinance, the City is to (1) assess the need for a network of natural gas fueling stations accessible to the public; (2) site and develop at least five such facilities, by public and/or private entities; (3) install 50 publicly accessible electric vehicle charging stations in City garages, lots, or other sites; (4) develop a plan for additional charging stations and related infrastructure; (5) buy and lease ultra-low and zero emission vehicles for City department use; (6) identify and convert diesel bus lines to electric service; (7) develop a plan to phase out older diesel buses; (8) develop a plan and incentives to encourage larger private vehicle fleets to convert their fleets to very low or zero emission vehicles; and (9) develop a car sharing program in high density neighborhoods.

Consistent with the City's Clean Air Program, the Port shall require that all tenants make a good faith effort to engage in operational practices sensitive to the environment and the neighboring community. In furtherance of this, the Port shall require that tenants operating a fleet of vehicles investigate the potential for use of low- or zero emission vehicles and implement measures to reduce vehicle emissions to the maximum feasible extent. Options may include, but not necessarily be limited to, the use of low-emission diesel fuel (including low-sulfur diesel); the use of catalytic particulate traps for diesel-powered engines that are currently under study by the California Air Resources Board; the use of other emerging technologies to reduce diesel particulate emissions; and use of electric vehicles. The Port shall also require that tenants operating diesel-powered stationary equipment investigate similar options. Tenants shall investigate retrofitting existing engines and purchase of new engines. The Port shall further require that tenants who work with independent trucking contractors encourage those contractors to make similar efforts, including, if reasonably feasible, providing such truckers with economic incentives to retrofit equipment or take other measures as may be necessary to use low-emission fuels. As an economic incentive to minimize diesel emissions from Port property, the Port shall contribute towards the incremental costs incurred by its tenants for Port-approved equipment and improvements in furtherance of this measure. Finally, the Port shall establish a schedule by which tenants described above shall report to the Port on progress in investigating reduced-emission engines.

C.5 The Port shall require that project sponsors direct construction contractors to implement a dust abatement program to reduce the contribution of project construction to local PM-10 concentrations. Elements of this program, which is currently applied to all Port tenants, include the following:

- Water internal roadways and unpaved construction areas just prior to the morning and evening peak traffic periods (to limit the potential for major roadway traffic to entrain dust), limit speeds to 10 mph, and sweep paved internal roads after the evening peak period.

- In addition, water active sites (e.g., where demolition, excavation or other earth work is underway) at least twice per day. Increase the frequency of watering when wind speeds exceed 15 miles per hour. Suspend all excavating and grading operation when instantaneous gusts exceed 25 miles per hour.

- Replace ground cover in disturbed areas as quickly as possible.

- Enclose, cover, water twice daily, or apply soil binders to exposed stockpiles of sand, gravel, and dirt.

- Install gravel at construction equipment entrances to unpaved areas to prevent tracking of dirt and mud onto streets.

- Sweep paved access roads, parking areas, and construction staging areas, at the end of day (with water sweepers), and sweep adjacent City streets if any visible soil material is carried over to these streets.

- Cover all trucks hauling dirt, sand, soil, or other loose materials. Maintain at least six inches of freeboard between the top of the load and the top of the trailer.

- Sweep up dirt or debris spilled onto paved surfaces immediately to reduce resuspension of particulate matter through vehicle movement over these surfaces.

- Designate a person or persons to oversee the implementation of a comprehensive dust control program and to increase watering, as necessary.

- Maintain and operate construction equipment so as to minimize particulates from exhaust emissions. During construction, require contractors to operate trucks and equipment only when necessary. Equipment should be kept in good condition and well-tuned, to minimize exhaust emissions.

Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor shall require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose.

This mitigation measure also would reduce demolition-related impacts regarding lead paint chips/lead dust. The project sponsor shall also be required to comply with Chapter 36 of the San Francisco Building Code, Work Practices for Exterior Lead-Based Paint, enforced by the San Francisco Department of Building Inspection.

C.6 Consistent with the construction-period dust abatement program described in Mitigation Measure C.5, the Port shall require that Industry Group components and other aggregate-related tenants employ dust abatement procedures including, but not necessarily limited to, the following:

- installation and operation of truck wheel-washing systems at the plant exits;

- daily street sweeping on streets surrounding aggregate-related facilities; and

- clearly posting on the exterior wall or fence of such facilities a company telephone number for citizens to call with dust, noise, or other operational complaints, and designation of a Port staff contact for same.

No other feasible mitigation measures have been identified that would reduce the project's total regional emissions to a level below Bay Area Air Quality Management District thresholds, or eliminate the project's contribution to potentially significant cumulative impacts from all existing (unquantified) and future (unknown) emissions sources.

D. HYDROLOGY

D.1 For construction sites of less than five acres of disturbed area, the contractors shall be required to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP) similar to that required under the statewide General Permit for Storm Water Discharges Associated with Construction Activity. The SWPPP would include site-specific information to identify and evaluate sources of pollutants associated with industrial activities and to identify and implement site-specific best management practices to reduce or prevent pollutants associated with industrial activities in stormwater discharges. Best management practices may be non-structural (e.g., activity schedules, maintenance procedures, prohibitions of practices) or structural (e.g., treatment measures, runoff controls, overhead coverage). Elements of the SWPPP shall include the following:

- measures for erosion and sediment controls
- methods for construction waste handling and disposal, and

- post-construction erosion and sediment control requirements.

D.2 To minimize the potential for water quality degradation from stormwater runoff, the Port shall require that all tenants and developers, including interim lessees such as the Industry Group members, implement source control Best Management Practices consistent with those identified in the Industrial / Commercial Storm Water Best Management Practices Handbook (Stormwater Quality Task Force, 1993). Measures shall include, but are not limited to, the following (some of which are proposed as part of one or more Industry Group components):

- prohibiting discharge of process water to storm drains or otherwise directly to the Bay or Islais Creek;
- separating stormwater from process water, such as concrete truck washout water and truck wash water, through the use of berms and other features, and ensuring that treated stormwater to be discharged to the Bay meets applicable permit and regulatory standards, including pH (acidity or akalinity);
- for Industry Group components that would use water in dust control, creation of settling basins or similar features that would allow sediment to be removed from water prior to reuse and/or discharge;
- daily street sweeping of surrounding streets and, for facilities that operate on unpaved surfaces, installation and operation of truck wheel-washing systems at aggregate-related plants;
- employing appropriate containment measures for fuel, asphalt cement, and other hazardous materials stored on-site, to capture potential spills (including at on-site fueling areas);
- installing and maintaining grease and sediment traps at vehicle maintenance and washing areas to prevent contaminated runoff from entering the storm drains or Bay;
- installation of sediment containment systems around outdoor aggregate storage facilities to limit sediment entering stormwater runoff, and covering such storage areas if feasible to limit stormwater infiltration;
- creation of a designated wash-out area for concrete trucks to prevent concrete slurry from reaching the Bay; and
- cover any open conveyors in use over the Bay (i.e., between piers and ships and barges) to minimize the potential for direct sediment spill to the Bay.

D.4 Sponsors of individual project components, including members of the Industry Group, shall be required to implement appropriate Best Management Practices for stormwater pollution prevention throughout the life of each lease and shall be required to monitor stormwater quality in accordance with the requirement of the statewide General Permit for Discharge of Industrial Stormwater.

E. HAZARDS

E.1 Accidental Release of Hazardous Materials or Petroleum Products

In accordance with the Hazardous Materials Ordinance, the sponsor of each Industry Group or Port project component shall ensure that a Hazardous Materials Business Plan is prepared for each of the project components involving the use of petroleum products or hazardous materials. The plan would specify methods for handling and storage of these including containment, site layouts, and emergency response and notification procedures for a spill or release.

The project sponsor(s) shall ensure that a Spill Control and Countermeasure Plan is prepared for any project involving the aboveground storage of petroleum products. The plan would include requirements for appropriate spill containment or equipment to divert spills from sensitive areas, a discussion of facility-specific requirements for the storage system, inspections and a record keeping system, security for the system, and personnel training. The project sponsor(s) would also comply with the state requirement that above-ground storage tanks subject to federal regulations are registered with the Regional Water Quality Control Board.

E.2 Hazardous Materials in Soil

E.2a Because the Hanson Aggregates operations at Pier 94 would be constructed bayward of the historic high tide line and would involve the excavation of at least 50 cubic yards of soil, the sponsors of those components shall ensure that the contractors comply with the requirements of Article 22A, "Analyzing the Soil for Hazardous Wastes."

G. GEOLOGY, SOILS, AND SEISMICITY

G.1 A geotechnical investigation ~~should~~ shall be conducted under the direction of a Geotechnical Engineer prior to permitting any new construction, ~~including construction of the proposed Illinois Street bridge,~~ or reuse of an existing structure for new uses that could increase the load of the structure ~~so as to~~ if such construction triggers the requirements of Section 3403.6 of the San Francisco Building Code. The investigation ~~should~~ shall be performed to evaluate subsurface conditions and existing foundation conditions at the site. The geotechnical investigation ~~should~~ shall evaluate the potential hazards such as settlement, ground shaking, ground rupture, liquefaction, subsidence, slope stability, and lateral spreading. Recommendations to mitigate geologic hazards ~~should~~ shall be made to the project's structural engineer regarding the design of new foundations, upgrading of existing foundations, seismic design, and mitigation of geologic hazards. *(1997 WLUP FEIR Measure I-1)*

G.2 To minimize hazards to building occupants from non-structural damage, the Port ~~should~~ shall require all Port facilities and tenants to carry out the following measures at a minimum: heavy objects ~~should~~ shall be attached to secure walls and floors, and light, loose objects ~~should~~ shall be placed to minimize their potential to move or overturn; large storage containers ~~should~~ shall not be loosely stacked, and those stored on shelves ~~should~~ shall have appropriate restraints or other means to prevent them from tipping or sliding off the shelves.

Heavy objects like freezers, boilers, chillers, laboratory equipment, battery racks and electrical transformers, heavy storage cabinets, tanks, safes, oversize file cabinets, etc., ~~should~~ shall be firmly secured to floors and walls to prevent their falling or sliding. All equipment using natural gas ~~should~~ shall be anchored. Care ~~should~~ shall be taken to avoid placement of such objects where they could topple or move and block exit doors. *(1997 WLUP FEIR Measure I-7b)*

G.4 Non-structural interior elements (ceilings, partitions, light fixtures, HVAC, pipes, etc.) ~~should~~ shall be designed to withstand strong ground shaking and remain intact. This would be accomplished, for example, by selecting lightweight materials and firmly securing them to structural elements of the building and by using flexible connections for pipes. *(1997 WLUP FEIR Measure I-7d)*

G.5 Require the use of flexible utility connections and fasten water heaters to walls. Require the installation of automatic shut-off valves in all natural gas pipelines and provide similar emergency shut-off valves for other gas (oxygen and nitrogen) systems or as otherwise required by the San Francisco Fire Department or the Port fire marshal. Do not install automatic shut-off valves for water supplies. Require the posting of room/building layout diagrams that indicate the location of shut-off valves for natural gas. *(1997 WLUP FEIR Measure I-7e)*

G.6 Require fire extinguishers in all rooms and hallways and adjacent to all exit doors (including stairwell exits), as required by the San Francisco Fire Code. Require that cabinets are not placed where they could overturn and block access to fire extinguishers. Require the training of all staff of offices, hotels, industrial facilities, restaurants and entertainment complexes in the use of fire extinguishers. *(1997 WLUP FEIR Measure I-7f)*

G.8 The Port ~~should~~ shall take feasible steps to minimize potential earthquake safety risks related to hazardous materials in its operations and that of its tenants.

Specific steps may include appropriate seismic safety provisions, such as prohibiting the storage of hazardous materials in containers above head level (about five feet); anchoring hazardous materials shelves and heavy equipment to walls and floors; constructing heavy doors that are designed to remain shut during earthquake vibrations; providing hand-operable closures for vents and air ducts; and other provisions as discussed in the Association of Bay Area Governments' *Hazardous Material Problems in Earthquakes: A Guide to Their Cause and Mitigation*. Other measures ~~should~~ shall be implemented as recommended by the San Francisco Fire Department and/or Health Department. Additionally, The Port has prepared an Emergency Procedures Manual for Port operations and periodically revise it to be consistent with changes in the facilities and operations. Tenants who use or store hazardous materials are required by the local Hazardous Materials Ordinance to develop a hazardous materials Business Plan, which includes emergency procedures. *(1997 WLUP FEIR Measure I-8a)*

G.9 The Port ~~should~~ shall require tenants to design all facilities for storage of hazardous chemicals in containers, such as cabinets, shelves, and drawers, to minimize potential hazards in an earthquake, in accordance with Fire Department and/or Health Department requirements.

Storage facilities ~~should~~ shall include safety lips to contain spills and to reduce the likelihood of contents falling. All shelves and cabinets ~~should~~ shall be secured to a wall or ceiling. All cabinets and drawers ~~should~~ shall be provided with positive latches that would not open during earthquake motions and vibrations. Compressed gas cylinders, including empty ones, ~~should~~ shall be secured to fixed features. Gas cylinders ~~should~~ shall be secured at two locations along their vertical axis, one in the top one-third of the cylinder and another in the bottom third of the cylinder.

The Port ~~should~~ shall require storage of hazardous chemicals in approved containers and separation of incompatible chemicals in separate storage areas. If chemical storage is vented by an electric fan, an alternative (emergency) means of ventilation ~~should~~ shall be provided, which may be a mechanical (non-powered) vent. *(1997 WLUP FEIR Measure I-8b)*

Implementation of Measures G.9 and G.10 would reduce hazardous materials-related non-structural safety hazards of an earthquake to an acceptable level of risk.

G.10 Project sponsors, including the Port, ~~should~~ shall employ an engineer qualified in earthquake engineering to incorporate into the final design of individual facilities developed under the WLUP

all economically feasible engineering methods to reduce the potential for loss of life-line services. This may include methods to improve unstable ground conditions, to strengthen infrastructure to be more resistant to earthquake induced ground movements, and to organize and prepare for earthquake response. While specialized techniques for ground improvement to reduce liquefaction hazards likely are not practical or economically feasible over large areas, ground improvements within selected strategic sites may result in substantial hazard reduction to utility systems. In such areas a variety of ground stabilization techniques may be considered, such as compaction grouting, placement of stone columns, and deep soil mixing. *(1997 WLUP FEIR Measure I-9a, Revised)*

G.11 For individual development projects, the use of flexible connections for utility lines may be needed (see Mitigation Measure G.7). Back-up supplies of water, power generators, and battery-operated telecommunications equipment may need to be installed (or enlarged at the existing facilities). The engineer ~~should~~ shall recommend the appropriate approach (e.g., separate facilities and equipment or upgrading existing facilities) for all Project Area facilities. *(1997 WLUP FEIR Measure I-9b)*

G-14 All open sub-grade structures and pits, whether temporary or permanent, ~~should~~ shall be provided with protection against damage resulting from adjustment to buoyant and lateral deforming soils.

All construction and design of such projects ~~should~~ shall provide specific measures to prevent hazards to people and damage to proposed or nearby structures that could result from these adjustments. In some cases, a specific geotechnical investigation may be required for permanent open sub-grade structures and open underground structures. *(1997 WLUP FEIR Measure I-2)*

REFERENCES – Mitigation Measures

Stormwater Quality Task Force, *Industrial/Commercial Best Management Practices Handbook*, prepared by Camp Dresser & McKee, et. al., March 1993.

Planning/oshima/southern waterfront/southern waterfront EIR/18

PORT OF SAN FRANCISCO

MEMORANDUM

February 18, 2004

TO: MEMBERS, PORT COMMISSION
Hon. Wilfred Hsu, President
Hon. Michael Hardeman, Vice President
Hon. Kimberly Brandon
Hon. Sue Bierman

FROM: Douglas F. Wong
Executive Director

SUBJECT: Approval of Second Amendment to and Restatement of Lease No. L-12175 with Hornblower Yachts, Inc. for Real Property and Exclusive Berthing Rights at Pier 3 (Resolution 04-16);

Approval of Second Amendment to and Restatement of Lease No. L-10421 with Ferryboat Santa Rosa Partners, Ltd. for Real Property and Exclusive Berthing Rights at Pier 3 (Resolution 04-17);

Approval of an Amendment to and Restatement of Lease No. L-12501 with Hornblower Yachts, Inc. for Real Property and Exclusive Berthing Rights at Piers 31-½ and 33 (Resolution 04-18).

DIRECTORS RECOMMENDATIONS: APPROVE SECOND AMENDMENT TO AND RESTATEMENT OF LEASE NO. L-12175; APPROVE AMENDMENT TO AND RESTATEMENT OF LEASE NO. L-12501; APPROVE SECOND AMENDMENT TO AND RESTATEMENT OF LEASE NO. L-10421.

Background Lease No. L-12175:

On November 1, 1997, the Port and Hornblower Yachts, Inc. entered into Lease No. L-12175 for 71,669 square feet of open pier space and 11,044 square feet of shed space along with exclusive berthing rights to 100,151 square feet of water area adjacent to Pier 3 for a term of 15 years (approved by Port Commission) (Resolution 97-96) (hereinafter the "Hornblower Pier 3 Lease").

In December, 2001, the Hornblower Pier 3 Lease was amended by an Amended and Restated Lease No. L-12175. This first amendment to the Hornblower Pier 3 Lease reduced the open pier space portion of the premises to 69,140 square feet, eliminated the shed portion of the premises,

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reduced the area of exclusive berthing rights to 98,982 square feet and provided for an access easement through the Pier 3 Bulkhead from the Embarcadero to Hornblower's Pier 3 premises. The term of the Hornblower Pier 3 Lease was extended through December 31, 2030 and Hornblower assumed all repair obligations including those for substructure repairs. Hornblower's cost of design construction and installation of the substructure repairs are to be reimbursed through rent credits against 50% of Hornblower's Pier 3 percentage rent obligations. Hornblower was also granted an option to lease a 1,400 square foot office in the Pier 3, North Bulkhead building for use as a ticket office and visitors center. Additionally, Hornblower agreed to provide parking for 25 Port vehicles formerly parked at Pier 1 at a rate equal to 34% of Hornblower's market rate, net of City taxes.

The amended Hornblower Pier 3 Lease was further clarified by a Letter Agreement dated February 28, 2002 which corrected certain typographical errors, established the Port's parking fee formulation procedure and adjusted certain performance dates regarding substructure repairs.

In March 2003, the Port Commission approved a Lease Disposition and Development Agreement ("LDDA") and Lease ("Piers Project Lease") with San Francisco Waterfront Development Partners ("SFWDP") for the historic renovation and redevelopment of the Piers 1½, 3 and 5 bulkhead buildings.

As a condition to SFWDP's obligation to lease and rehabititals the Piers 1½, 3 and 5 bulkhead buildings, the LDDA requires the Port to make certain modifications to the Hornblower Pier 3 Lease. These modifications include:

1. The reservation of 25 Parking Spaces for the exclusive use by SFWDP.
2. The restriction on development of approximately 20,575 square feet of the Pier 3 surface area.
3. The relocation of Hornblower's ticket office/visitor center from the Pier 3 North Bulkhead to the Pier 3 Bulkhead.
4. The adjustment of Hornblower's lease lines including the reduction of a portion of Hornblower's exclusive berthing area to accommodate SFWDP's public accesses improvements.
5. The granting of an access right in favor of SFWDP across a portion of Pier 3 for construction staging and laydown.
6. Limitations on Hornblower's use of its rights to ingress and egress through the Pier 3 Bulkhead.
7. The sharing of SFWDP's maintenance costs attributable to the access way through Pier 3.
8. The temporary placement of a construction barge in Hornblower exclusive berthing area.

Hornblower was under no obligation to agree to any of the modifications to its lease sought by SFWDP and required by the LDDA.

In consideration of its agreement to accede to the LDDA's terms, Hornblower has sought several reasonable concessions from the Port all of which affect the terms and conditions of the Hornblower Pier 3 Lease. These concessions are:

1. A reduction in base rent reflecting the reduction in the size of Hornblower's exclusive berthing area.
2. The creation of a nonexclusive utility area in favor of Hornblower beneath Pier 3 to the Embarcadero.
3. A right for Hornblower to place its signage on the Pier 3 archway façade.
4. A right for Hornblower to use the flagpole atop the Pier 3 archway.
5. The automatic expansion of the Hornblower premises to incorporate the pier and water area now affected by the lease with the Ferryboat Santa Rosa Partners, Ltd. (Lease No. L-10421) to be effective upon the termination of that lease.
6. An extension of performance dates relative to the preparation of a repair plan for the Pier 3 substructure.
7. The relocation of all Hornblower utilities required for the historic renovation and redevelopment of Piers 1½, 3 and 5 at no cost to Hornblower.
8. An option to extend the term of the lease following Hornblower's completion of substructure repairs.
9. An acceleration of Hornblower's rent credit reimbursements and the inclusion of other Hornblower percentage rent obligations in calculating that reimbursement.
10. An additional rent credit for the relocation of Hornblower's electrical transformer required as a condition of its BCDC permit.
11. A right to terminate the lease if, in Hornblower's reasonable opinion, future rent credits will not, over the remaining lease term, effect a total reimbursement of Hornblower's cost of substructure repairs.

Over the course of the last year, Port Real Estate staff, coordinating with Port Planning and Development staff, has negotiated the terms of the proposed Second Amendment to and Restatement of Lease No. L-12175 ("Second Amendment to the Hornblower Pier 3 Lease") that incorporates all of the requirements of the LDDA and those considerations sought by Hornblower. As proposed the Second Amendment to the Hornblower Pier 3 Lease provides for the following terms and conditions.

Premises:

Parcel A:	69,140 square feet of open pier space at Pier 3.
Parcel B:	A 30-foot wide by 14-foot high right-of-way through the Pier 3 bulkhead.
Parcel C:	Exclusive berthing rights to approximately 93,077 square feet of water area adjacent to Pier 3.
Parcel D:	Non-exclusive right for the location and maintenance of utilities under the SFWDP leased premises.

The Premises have been reconfigured so as to permit SFWDP's installation of its public access improvements and the relocation of a construction barge without occupying any portion of the Hornblower premises.

Signage:
A right to signage on the Pier 3 archway façade.

Flagpole:
A right to use and access the flagpole on top of Pier 3.

Expansion of Premises:
The automatic expansion of Hornblower Pier 3 Lease premises at the expiration of the FerryBoat Santa Rosa Lease (Lease No. L-10421) to include all of the area affected by that lease and at the same base and percentage rents applicable at the time of the expansion.

Restricted Use Zone:
Hornblower agrees to restrict development in Pier 3 consistent with the requirements of the LDDA.

Parking:
Hornblower agrees to provide 25 spaces to SFWDP for 10 years at a market rate fee.

Surface Improvement:
Hornblower will grant to SFWDP right to construct an architectural surface treatment within the Hornblower leasehold.

Term:
The term remains the same expiring on December 31, 2030, subject to extension as described below.

Substructure Repairs:
Hornblower agrees to be responsible for all substructure repairs beneath Pier 3, including the substructure beneath that portion of the pier controlled by the Ferryboat Santa Rosa Partners, Ltd lease (Lease No. L-10421). Hornblower will agree to submit a substructure repair plan to the Port by not later than December 31, 2004 and will complete the repairs by not later than December 31, 2010. The cost of such repairs shall be reimbursed via rent credits against 70% of Hornblower's percentage rent obligations under the Second Amended Hornblower Pier 3 Lease and Hornblower's percentage rent obligations under Port Lease No. L-12501 affecting portions of Piers 31 ½ and 33.

Extension of Term:
If, following the completion of the substructure repairs outlined in the substructure repair plan, the Port determines that the useful life of Pier 3, with continuing routine maintenance, has been

extended through December 31, 2056, Hornblower may request an extension of the term through December 31, 2051.

If Hornblower fails to submit an appropriate substructure repair plan per the schedule outlined in the Second Amended Lease, Hornblower will not be entitled to rent credits for substructure repairs or an extension of the term. However, Hornblower's obligation to maintain and repair the Pier 3 premises, including substructure repairs will not be extinguished.

Right to Terminate:
Following the Port's approval of the substructure repair plan, if, Hornblower determines prior to its completion of the substructure repairs that, in Hornblower's reasonable judgement, it is unlikely that the percentage rent credits provided in the Second Amended Hornblower Pier 3 Lease will allow for complete reimbursement of Hornblower's substructure repair costs over the remaining term of the lease, Hornblower may terminate the Hornblower Pier 3 Lease upon 180 days written notice and repayment to Port of 50% of all rent credits taken by Hornblower up to the date of termination.
Rent:
The base rent has been reduced from $14,987.67 to $14,166.67 per month to reflect the reduction in premises size. The base rent is to be adjusted annually pursuant to a CPI based formula.

Percentage Rent:
Hornblower shall pay percentage rents equal to:

- 66% of Gross Receipts (net of taxes) for retail parking
- 10% of gross receipts for the sale of tours and excursions not operated by Hornblower
- 6% of all other gross receipts including customer parking.

Rent Credits:
The original lease provided for the following rent credits for the following items:

- Public Access Improvements	$400,000
- Berthing Improvements	$750,000
- Substructure Repairs	$8,000,000

The Second Amendment to the Hornblower Pier 3 Lease does not increase or reduce any of these rent credit accounts totals. However, Hornblower's internal labor is now included as a reimbursable cost for all three rent credit categories and Hornblower's cost of preparing the substructure repair plan is to be included as a part of the cost of substructure repairs.

An additional rent credit of $250,000 has been provided for Hornblower's cost to relocate its electrical transformer to accommodate both Hornblower's public access improvement obligation and the relocation of utilities required by the historic renovation and redevelopment of Piers 1 ½, 3 and 5.

Sharing of Pier 3 Access Maintenance Costs:
Hornblower agrees to be responsible for 50% of the maintenance costs attributable to its access rights through the Pier 3 bulkhead (Parcel B). SFWDP is responsible for performance of such maintenance.

Access and Utility Rights:
The Second Amended Hornblower Pier 3 Lease now documents rights in favor of the FerryBoat Santa Rosa Partners, Ltd. for vehicular and pedestrian access to the FerryBoat Santa Rosa Partners and for utility lines serving that historic vessel.

Permitted Uses:
The following uses are permitted on the Hornblower Pier 3 Lease Premises:

1. Passenger loading and unloading operations and maintenance of excursion and passenger vessels.
2. The placement of a compound or compounds for office space, any storage, launching, mooring and display facilities for an America's Cup syndicate.
3. Berthing of transient vessels (72 hour maximum).
4. Maritime offices.
5. Photo services.
6. Visitor's center for sale of excursion and tour tickets.
7. Special events
8. Customer Parking
9. Public Parking
10. Parking for Port and SFWDP tenant vehicles.
11. Such other support activities reasonably related to Hornblower's other permitted uses.
12. The placement and maintenance of utilities in the utility easements (parcel D).

Occupancy Restriction:
The lesser of 2,000 persons or the number permitted by law may occupy the Parcel A premises at any one time.

Maintenance and Repairs:
Hornblower is responsible for all maintenance and repairs including substructure repairs.

Relocation of Utilities:
The Port or its designee shall be responsible for the relocation of all utilities required by the historic renovation and redevelopment of Piers 1½, 3 and 5. Hornblower shall be responsible for any upgrades requested by Hornblower.

Leasehold Mortgages:
The Lease includes updated leasehold mortgage provisions similar to the recent Boudin leasehold, that, in Port staffs opinion, will allow for leasehold financing of the proposed substructure repairs.

Conformance to Secretary's Standards:
Hornblower agrees to adhere to the historic rehabilitation standards established by the Secretary of the Interior through the U. S. Park Service for the rehabilitation of historic resources within historic districts.

Port Commission Finding:
The Second Amended Hornblower Pier 3 Lease acknowledges that the Port Commission has made a finding that the amendments proposed by the Second Amended Hornblower Pier 3 Lease are required in order to effect a public project, namely the historic renovation and redevelopment of Piers 1 ½, 3 & 5.

The provisions of the City's Health Care Accountability Ordinance (Administrative Code Chapter 12Q) require that all new leases or amendments to existing lease include the requirements of the Health Care Accountability Ordinance. However, it is Hornblower's position that the ordinance provides for a waiver of applicability when the amendment to lease is required in order to effect a public project. The City Attorney has not issued an opinion as to the validity of Hornblower's position.

Miscellaneous Provisions:
This Lease updates and strengthens many of the Port's lease provisions, consistent with more recent development leases, including provision regarding insurance, subsequent construction of improvements, City Requirements, Prevailing Wages and Equal Opportunity Program.

Analysis:
Hornblower's agreement to modify its existing lease is required to move forward with the historic renovation and rehabilitation of Piers 1 ½, 3 and 5. Hornblower has agreed to all of the conditions required by the Piers 1 ½, 3 & 5 LDDA as well as other more protective lease requirements for the Port, based on more recent Port leases. In return, the Port has agreed only to an acceleration of rent credits for items previously agreed to by the Port, with the inclusion of additional cost categories, but without an increase in the total amount of rent credits, a possible extension of the term, a qualified right to terminate and a single additional rent credit for relocation of an electrical transformer.

Hornblowers agreement to conform to the Secretary's Standards preserves SFWDP's ability to use historic tax credits to finance a portion of the costs of the historic renovation and redevelopment of Piers 1½, 3 and 5.

Background Lease No. L-12501

On November 7, 1997 by Port Commission Resolution 97-96, the Port approved Lease No. L-12501 (the "Hornblower Pier 31½ Lease") for 43,927 square feet of open pier and exclusive berthing rights to 22,000 square feet of water area at Pier 31½. The term was for five years at a monthly rental rate of $18,024.00. The lease provided for a percentage rent equal to 6% of all Gross Receipts for excursion and special event services, 66% of gross receipts (net of City taxes)

for retail parking, and 10% of commissions and mark-ups for retail sales for excursions and tours not operated by the tenant.

In addition by separate agreements the Port leased 1,925 square feet of shed space at Pier 33 (Lease Nos. 10940 and 11053) and 1,592 square feet of shed space at Pier 31 (Lease No. 13123).

All of these leases, including Lease No. L-12501 are now month to month leases.

A portion of the Pier 31½ open pier area premises of the L-12501 lease and the Pier 31 shed premises of Lease No. 13123 will be required for inclusion into the Mills Project lease at Piers 27, 29 and 31.

When originally negotiated, it was assumed that by the expiration of the original term in 2002, Hornblower would have moved its entire excursion operation to the Pier 3 shed and open pier area controlled by Hornblower under Port Lease No. L-12175. However, the elimination of the Pier 3 shed area from the premises needed to pursue the historic renovation and redevelopment of Piers 1½, 3 and 5, the expanded scope of needed substructure repairs at Pier 3 and the impact of the post 9-11-01 economy, have not allowed Hornblower to consolidate all of its activities at Pier 3.

As discussed above, Hornblower's agreement to enter into the proposed Second Amendment to and Restatement of Lease No. L-12175 affecting Pier 3 (the Hornblower Pier 3 Lease) is conditioned upon the Port agreeing to certain modifications to the Port's lease with Hornblower affecting real property and adjacent water area at Pier 31½. These modifications are:

1. An extension of the term from its existing month-to-month holdover so as to expire October 31, 2014.
2. An expansion of the premises to include the shed space in Pier 33 now controlled by Port month-to-month leases with Hornblower (Port Leases No. 10940 and No. 11053) as well as additional shed space in Pier 33 to replace shed space in Pier 3 controlled by former Port Lease No. 12785 and shed space at Pier 31 controlled by Port month-to-month Lease No. 13123.
3. The expansion of Hornblower's exclusive berthing area at Pier 31½ (currently 22,000 sq. feet) to a size convenient to accommodate its largest existing vessel, the San Francisco Belle.
4. A "percentage rent only" attribution of rent to the parking area at Pier 31½.
5. The right to use Pier 31½ for special events.

Port Real Estate staff has negotiated the terms of a proposed Amendment to and Restatement of Lease No. L-12501 (the "Hornblower Pier 31½ Lease") accommodating these conditions and providing for the following.

Premises:

Parcel A	42,952 square feet of open pier space at Pier 31½.
Parcel B	60,000 square feet (200' x 300') of exclusive berthing area adjacent to the Parcel A premises.
Parcel C	3,575 square feet of shed space in Pier 33.
Parcel D	1,760 square feet of shed space in Pier 33.

Term:
November 1, 1997 (the original commencement date of Lease L-12501) through October 31, 2004.

Rent:
Base Rent Effective as of March 1, 2004: $2,090.00 per month adjusted annually pursuant to a CPI based formula.

Percentage Rent: 6% of Gross receipts
66% of Gross Parking receipts (net of City taxes)
10% of fees mark ups and commissions for ticket sales for excursions and tours not operated by the tenant.

Use: Excursions, both vehicle and vessel
Catering
Ticket booth
Photo sales
Special events
Parking
Support function for the other permitted uses.

Reduction of Premises:
A portion of the Pier 31½ open pier space will be available to the Port for inclusion into the Pier 27, 29 and 31 Mills Project without abatement of rent.

Maintenance and Repairs:
Tenant is responsible for all maintenance and repairs, except that the Port is responsible for the roof, exterior walk substructure and common drives, doors and lighting in Pier 33. Neither the Port nor Hornblower assume responsibility for substructure repairs to Pier 31½.

Port Commission Finding:
Finding the proposed amendment requires that the Port Commission make a finding that the Amendment to Lease no. L-12501 is required in order to effect a public project, namely the redevelopment of Piers 27, 29 and 31 and the historic renovation and redevelopment of Piers 1½, 3 and 5.

Analysis:
The proposed Amendment and Restatement to Lease No. L-12501 allows Hornblower the additional time it needs to cooperate with the Port and SFWDP in the historic renovation and redevelopment of Pier 3 and the undertaking of needed repairs to the Per 3 substructure. The amendment also allows Hornblower to centralize its existing "back of the house" operations in a single pier facility. At the same time, the Port maintains its flexibility to utilize portions of Pier 31½ as a part of the renovation and redevelopment of Piers 27, 29 and 31. There will be no financial impact to the Port as a result of the elimination of base rent attributable to the Pier 31½ parking lot. The maintenance of current post 9-11 sales levels will result in percentage rent due to the Port under this lease in excess of minimum rent obligations under both the proposed and pre amendment scenarios.

Background Lease No. L-10421

In October, 1998, the Port Commission approved Lease No. L-10421 with the Ferryboat Santa Rosa Partners, Ltd. for real property and an adjacent exclusive berthing area at Pier 3 (the "Ferryboat Santa Rosa Lease"). The Ferryboat Santa Rosa Lease was amended by an Amendment to and Restatement of Lease No. L-10421 dated September 26, 2000 and further amended by a Letter Agreement dated February 28, 2002. In March 2003, the Port Commission approved a Lease Disposition and Development Agreement (LDDA) with the San Francisco Waterfront Development Partners for the historic renovation and revitalization of the Pier 1½, 3 and 5 bulkhead. The terms of the LDDA require the Port to make certain modifications to the Ferryboat Santa Rosa Lease in order to effect the historic renovation and redevelopment of Piers 1½, 3 and 5. These modifications include:

1) The restriction on development of approximately 7,994 square feet of Pier 3 controlled by Lease No. L-10421.
2) The reduction of a portion of the Ferryboat Santa Rosa's exclusive berthing area in order to accommodate the public access improvements to be installed by SFWDP as a part of the historic renovation and redevelopment of Piers 1½, 3 and 5.
3) The relocation of the mooring cleats now used to secure the Ferryboat Santa Rosa at her berth at Pier 3.
4) The granting of a right in favor of SFWDP for construction staging and lay down.
5) The placement of a construction barge in the Ferryboat Santa Rosa exclusive berthing area.

In addition, the modifications to the Hornblower Pier 3 Lease at Pier 3 (Lease No. L-12175), discussed above, required by the LDDA required the Port to provide access to the Ferryboat Santa Rosa across the Hornblower Lease No. L-12175 premises to the access way through the Pier 3 bulkhead and the utility areas under Pier 3 and the Pier 3 bulkhead.

Over the course of a year, Port Real Estate staff and the Ferryboat Santa Rosa Partners have negotiated the terms of a proposed Second Amendment and Restatement of Lease No. L-10421 that accommodates the needs of SFWDP as set forth in the LDDA and to provide access and

utility rights across these portions of Pier 3 controlled by the LDDA and the Hornblower Pier 3 Lease (Lease No. L-12175).

In return for its agreement to these modifications, The Ferryboat Santa Rosa Partners, Ltd. have sought only minor concessions from the Port. Those concessions consist solely of the (1) the Port's agreement to relocate the utility lines serving the Ferryboat Santa Rosa and as required by SFWDP at SFWDP's cost, the relocation of the mooring cleats to locations acceptable to and at no cost to the Ferryboat Santa Rosa Partners, Ltd., the approval of a rent credit against percentage rent of up to $175,000 for reimbursement for the cost of installing an ADA (accessible) ramp from Pier 3 to the Ferryboat Santa Rosa main deck and an abatement in rent attributable to the area encompassing the SFWDP construction staging and lay down area during its use by SFWDP.

Port Real Estate staff has negotiated the terms of a proposed Second Amendment to and Restatement of Lease No. L-10421 (the Ferryboat Santa Rosa Lease) providing for the following terms and conditions:

Premises:

Parcel A:	11,561 square feet of open Pier Space at Pier 3.
Parcel B:	39,823 square feet of exclusive berthing area adjacent to the Parcel A Premises.
Parcel C:	A 30 foot wide and 14 foot high non exclusive right of way for pedestrian and vehicular access through the Pier 3 bulkhead building from the Hornblower Lease No. L-12175 Pier 3 Parcel A Premises to the Embarcadero.
Parcel D:	A non-exclusive right of pedestrian and vehicular access across the Hornblower Lease No. L-12175 Parcel A Premises.
Parcel E:	A non-exclusive right to the placement and maintenance of utilities beneath portions of the SFWDP Premises.
Parcel F:	A non-exclusive right of way for the placement and maintenance of utilities beneath the Hornblower Lease No. L-12175 Parcel A Premises.

The Parcel A and Parcel C boundaries have been adjusted from the original lease to allow for both SFWDP's installation of public access improvements required as a part of the historic renovation and redevelopment of Piers 1½, 3 and 5 and the temporary location of construction barges.

Restricted Use Zone:
The Ferryboat Santa Rosa Partners, Ltd. agrees to restrict development on its Parcel A premises consistent with the terms of the LDDA.

Substructure Repairs:
Ferryboat Santa Rosa Partners will have no responsibility for substructure repairs. Substructure repairs will be the responsibility of Hornblower Yachts, Inc. under the terms of the Hornblower

Pier 3 Lease (Lease No. L-12175). If Hornblower fail to make such repairs and the condition of the premises is "red tagged," Tenant's sole remedy shall be to terminate the Lease.

Term:
The term remains unchanged expiring December 31, 2030.

Rent:

Base Rent: $3,258.00 per month reflecting a reduction in the Parcel C Premises ($674.00) adjusted annually pursuant to a CPI based formula.

Percentage Rent: 6% of gross receipts from Tenant's retail activities on the Premises 10% of all sublease revenues.

Rent credits: Up to $175,000.00 against the tenant's percentage rent obligations for costs directly attributable to the tenant's installation of an ADA accessible ramp from Parcel A to the main entrance of the Ferryboat Santa Rosa.

Permitted Uses:

1. Berthing, passenger loading and unloading of passenger vessels engaged in Special Excursion Service.
2. Berthing of transient vessels (96 hour maximum).
3. Installation of berthing improvements.
4. Catering
5. Maritime offices.
6. Photo services.
7. Special events
8. Berthing of a historic vessel (the Ferryboat Santa Rosa).
9. Milking rooms and banquet facilities on board a historic vessel.
10. Museum on board a historic vessel.
11. Support activities directly related to the above uses.

Repairs and Maintenance:
The Ferryboat Santa Rosa Partners, Ltd. are responsible for all repairs and maintenance except repairs and maintenance of the Pier 3 substructure. That obligation has been assumed by Hornblower Yachts, Inc. under the terms of the proposed Second Amendment and Restatement to Lease No. L-12175.

Relocation of Utilities:
The Port or its designee shall be responsible for the relocation of all utilities required by the historic renovation and redevelopment of Piers 1½, 3 and 5. Ferryboat Santa Rosa shall be responsible for any upgrades requested by Ferryboat Santa Rosa.

Port Commission Finding:
The Second Amendment to and Restatement of Lease No. L-10421 acknowledges that the Port Commission has made a finding that the amendments proposed by the document are required in order to effect a public project, namely the historic renovation and redevelopment of Piers 1½, 3 and 5.

Miscellaneous Provisions:
This Lease updates and strengthens many of the Port's lease provisions consistent with more recent Port development leases, including provisions regarding insurance, construction of new improvements, and City Requirements.

Analysis:
The Ferryboat Santa Rosa Limited Partners, Ltd. agreement to modify its existing lease is required to move forward with the historic renovation and rehabilitation of Piers 1½, 3 and 5. The Ferryboat Santa Rosa Limited Partners, Ltd. has agreed to all of the conditions required by the Piers 1½, 3 and 5 LDDA. In return, the Port has agreed only to the inclusion of a single rent credit for the installation of an ADA accessible ramp from Pier 3 to the Ferryboat Santa Rosa main deck.

Conclusion and Recommendation:
The proposed Second Amendment to and Restatement of Lease No. L-12175 (the "Hornblower Pier 3 Lease") the proposed Amendment to and Restatement of Lease No. L-12501 (the "Hornblower Pier 31½ Lease"), and the proposed Second Amendment to and Restatement of Lease No. L-10421 (the "Ferryboat Santa Rosa Lease") are necessary to complete the Port's obligations under the terms of the LDDA with SFWDP Amendment and are necessary effect the historic renovation and redevelopment of Piers 1½, 3 and 5. The Amendment to and Restatement of Lease No.L-12501 (the "Hornblower Pier 31½ Lease") also will facilitate and assist in effecting the future renovation and redevelopment of Piers 27, 29 and 31.

All three proposed amendments are in the best interests of the City and the Port.

Hornblower Yachts, Inc. and the Ferryboat Santa Rosa Partners, Ltd. have been most cooperative and generous in accommodating the Port's needs regarding these two projects.

Port staff recommends Port Commission approval of the Second Amendment to and Restatement of Lease No. L-12175, the Amendment to and Restatement of Lease No. L-12501 and the Second Amendment to and Restatement of Lease No. L-10421.

Prepared by Nic Dempsey, Asset Manager

PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. 04-16

WHEREAS, Section 3.581 of the Charter of the City and County of San Francisco empowers the Port Commission with the power and duty to use, conduct, operate, maintain, manage, regulate and control Port areas of the City and County of San Francisco; and

WHEREAS, Section 3.581(g) of the City and County of San Francisco provides that lease granted and made by the Port Commission should be administered exclusively by the operating forces of the Port Commission; and

WHEREAS, the Port Commission and Hornblower Yachts, inc., a California corporation ("Hornblower") entered into that certain Lease No. L-12175 lease dated November 1, 1997 (the "Original Hornblower Pier 3 Lease") whereby the Port leased to Hornblower and Hornblower leased from the Port certain real property and adjacent water areas located at Pier 3; and

WHEREAS, the Port Commission and Hornblower entered into that certain First Amendment to and Restatement of Lease No. L-12175 dated September 26, 2000, modifying certain terms of the Original Hornblower Pier 3 Lease, the Original Hornblower Lease as subsequently modified by the Amendment to and Restatement of Lease No. L-12175 is hereinafter referred to as the "Hornblower Pier 3 Lease"; and

WHEREAS, the Port Commission and Ferryboat Santa Rosa Partners, Ltd. ("Ferryboat Santa Rosa") entered into that certain Lease No. L-10421 dated October 8, 1998 (the "Original Ferryboat Santa Rosa Lease") whereby the Port leased to and Ferryboat Santa Rosa and Ferryboat Santa Rosa leased from Port certain real property and adjacent water areas located at Pier 3; and

WHEREAS, the Port Commission and Ferryboat Santa Rosa entered into that certain Amendment to and Restatement of Lease No. L-10421 dated September 26 modifying certain terms of the Original Ferryboat Santa Rosa Lease; and

WHEREAS, the Port Commission and the Ferryboat Santa Rosa entered into that certain Letter Agreement dated modifying the terms of the further Original Ferryboat Santa Rosa, the Original Ferryboat Santa Rosa as subsequently amended by the Amendment to and Restatement of Lease No. L-10421 and the Letter Agreement dated is hereafter referred to as the "Ferryboat Santa Rosa Lease"; and

WHEREAS, the Port Commission and Hornblower entered into that certain Lease No. L-12501 dated (the "Hornblower Pier 31½ Lease") whereby the Port leased to Hornblower and Hornblower leased from the Port certain real

property and adjacent water area at Pier 31½, hereinafter the Hornblower Pier 31½ Lease") ; and

WHEREAS, the Port Commission and the San Francisco Waterfront Development Partners, LLC, a California limited liability corporation ("SFWDP") entered into that certain Lease Disposition and Development Agreement dated November 18, 2003 ("LDDA") for the historic renovation and redevelopment of Piers 1½, 3 and 5; and

WHEREAS, the terms of the LDDA require that certain modifications be made to the Hornblower Pier 3 Lease in order to effect the historic renovation and redevelopment of Piers 1½, 3 and 5 as anticipated by the LDDA; and

WHEREAS, the Port and Hornblower have negotiated the terms and conditions of a Second Amendment to and Restatement of Lease No. L-12175 that accommodates all those modifications to the Hornblower Pier 3 Lease required by the LDDA; and

WHEREAS, the Port and Hornblower have negotiated the terms and conditions of an Amendment to and Restatement of Lease No. L-12501 accommodating all of the conditions required by Hornblower to gain its agreement to enter into the proposed Second Amendment to and Restatement of Lease No. L-12175; and

WHEREAS, Hornblower's agreement to enter into the Second Amendment to and Restatement of Lease No. L-12175 is conditioned upon the Port's agreement to extend the term, expand the permitted uses, expand the premises and otherwise modify the terms and conditions of the Hornblower Pier 31½; and

WHEREAS, On June 13, 2001 the Port entered into that certain agreement entitled Exclusive Right to Negotiate with The Mills Corporation ("Mills") granting exclusive negotiation rights to Mills for the renovation and redevelopment of Piers 1½, 3 and 5; and

WHEREAS, In order to effect the renovation and redevelopment of Piers 27, 29 and 31, it may be necessary to reduce the size of the Pier 31½ premises affected by the Hornblower Piers 31½ Lease; and

WHEREAS, the proposed Amendment to and Restatement of Lease No. L-12501 provides for a reduction in the size of the premises as may be required for the Port to proceed with the proposed renovation and redevelopment of Piers 27, 29 and 31; and

WHEREAS, the terms of the LDDA require that certain modifications be made to the Ferryboat Santa Rosa Lease in order to effect the historic renovation and redevelopment of Piers 1½, 3 and 5 as anticipated by the LDDA; and

WHEREAS, the Port and Ferryboat Santa Rosa have negotiated the terms and conditions of a Second Amendment to and Restatement of Lease No. L-10421 that accommodates the all those modifications to the Ferryboat Santa Rosa Lease required by the LDDA; and

WHEREAS, it is necessary for the Port and Hornblower to enter into the proposed Second Amendment to and Restatement of Lease No. L-12175 in order to effect a public project, namely the historic renovation and redevelopment of Piers 1½, 3 and 5; and

WHEREAS, it is necessary for the Port and Hornblower to enter into the proposed Amendment to Lease No. L-12501 in order to effect two public projects, namely, the historic renovation and redevelopment of Piers 1½, 3 and 5 and the renovation and redevelopment of Piers 27, 29 and 31; and

WHEREAS, it is necessary for the Port and Ferryboat Santa Rosa to enter into the proposed Second Amendment to and Restatement of Lease No. L-10421 in order to effect a public project, namely the historic renovation and redevelopment of Piers 1½, 3 and 5; and

WHEREAS, the best interests of the City and County of San Francisco and the Port Commission will be served by entering into the Second Amendment to and Restatement of Lease No. L-12175 with Hornblower Yachts, Inc; and

WHEREAS, the best interests of the City and County of San Francisco and the Port Commission will be served by entering into the Amendment to and Restatement of Lease No. L-12501 with Hornblower Yachts, Inc; and

WHEREAS, the best interests of the City and County of San Francisco and the Port Commission will be served by entering into the Second Amendment to and Restatement of Lease No. L-10421; now therefore be it

RESOLVED, that it is the finding of the San Francisco Port Commission that it is necessary to enter into the Second Amendment to and Restatement of Lease No. L-12175 with Hornblower Yachts, Inc. in order to effect a public project namely the historic renovation and redevelopment of Piers 1½, 3 and 5; and be it further

RESOLVED, that it is the finding of the San Francisco Port Commission that it is necessary to enter into the Second Amendment to and Restatement of Lease No. L-10421 with the Ferryboat Santa Rosa Partners, Ltd. in order

to effect a public project namely the historic renovation and redevelopment of Piers 1½, 3 and 5; and be it further

RESOLVED, that it is the finding of the San Francisco Port Commission that it is necessary to enter into the Second Amendment to and Restatement of Lease No. L-12501 with Hornblower Yachts, Inc. in order to effect a public project namely the historic renovation and redevelopment of Piers 1½, 3 and 5 and the renovation and redevelopment of Piers 27, 29 and 31; and be it further

RESOLVED, that the San Francisco Port Commission hereby approves the terms and conditions of the Second Amendment to and Restatement of Lease No. L-12175 as set forth in the staff Memorandum for Agenda Item No. 7A for the regularly scheduled Port Commission meeting of February 24, 2004 and a copy of which is on file with the Commission Secretary; and be it further

RESOLVED, that the San Francisco Port Commission hereby authorizes and directs the Executive Director or his designee to execute the Second Amendment to and Restatement of Lease No. L-12175 including all exhibits thereto, in substantially the form of such agreement on file with the Commission Secretary and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, that the San Francisco Port Commission authorizes the Executive Director to enter into any addition, amendments or other modifications to the Second Amendment to and Restatement of Lease No. L-12175 (including without limitation, preparation and attachment of, or changes to any and all exhibits, that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not increase or decrease the rent, and are necessary or advisable to complete the transactions incorporated in the Second Amendment to and Restatement of Lease No. L-12175 in accordance with this resolution, such determination to be evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, that the San Francisco Port Commission authorizes and urges the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including without limitation, the execution and delivery of any and all certificates, agreements, notices, escrow instruction, closing instructions or other documents) as they or any of them deem necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions incorporated in the Second Amendment to and Restatement of Lease No. L-12175 in accordance with this resolution, or to otherwise

effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, that the San Francisco Port Commission hereby approves the terms and conditions of the Second Amendment to and Restatement of Lease No. L-12501 as set forth in the staff Memorandum for Agenda Item No. 7A for the regularly scheduled Port Commission meeting of February 24, 2004 and a copy of which is on file with the Commission Secretary; and be it further

RESOLVED, that the San Francisco Port Commission hereby authorizes and directs the Executive Director or his designee to execute the Second Amendment to and Restatement of Lease No. L-12501 including all exhibits thereto, in substantially the form of such agreement on file with the Commission Secretary and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

RESOLVED, that the San Francisco Port Commission authorizes the Executive Director to enter into any addition, amendments or other modifications to the Second Amendment to and Restatement of Lease No. L-12501 (including without limitation, preparation and attachment of, or changes to any and all exhibits, that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not increase or decrease the rent, and are necessary or advisable to complete the transactions incorporated in the Second Amendment to and Restatement of Lease No. L-12501 in accordance with this resolution, such determination to be evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, that the San Francisco Port Commission authorizes and urges the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including without limitation, the execution and delivery of any and all certificates, agreements, notices, escrow instruction, closing instructions or other documents) as they or any of them deem necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions incorporated in the Second Amendment to and Restatement of Lease No. L-12501 in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents; and be it further

RESOLVED, that the San Francisco Port Commission hereby approves the terms and conditions of the Second Amendment to and Restatement of Lease No.

L-10421 as set forth in the staff Memorandum for Agenda Item No. 7A for the regularly scheduled Port Commission meeting of February 24, 2004 and a copy of which is on file with the Commission Secretary; and be it further

RESOLVED, that the San Francisco Port Commission hereby authorizes and directs the Executive Director or his designee to execute the Second Amendment to and Restatement of Lease No. L-10421 including all exhibits thereto, in substantially the form of such agreement on file with the Commission Secretary and in such final form as is approved by the Executive Director in consultation with the City Attorney; and be it further

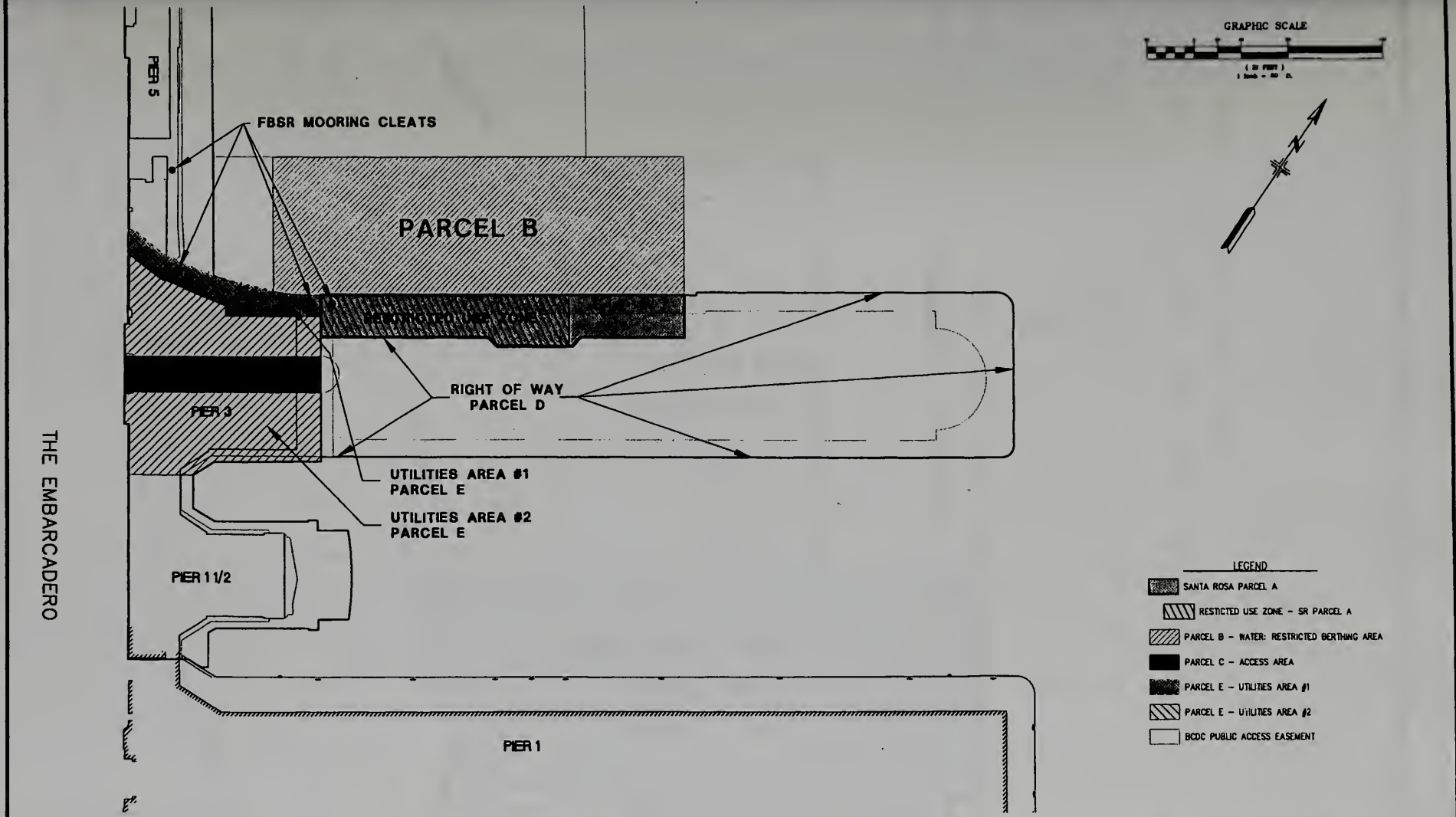
RESOLVED, that the San Francisco Port Commission authorizes the Executive Director to enter into any addition, amendments or other modifications to the Second Amendment to and Restatement of Lease No. L-10421 (including without limitation, preparation and attachment of, or changes to any and all exhibits, that the Executive Director, in consultation with the City Attorney, determines are in the best interests of the City, do not increase or decrease the rent, and are necessary or advisable to complete the transactions incorporated in the Second Amendment to and Restatement of Lease No. L-10421 in accordance with this resolution, such determination to be evidenced by the execution and delivery by any such person or persons of any such documents; and now, therefore be it

RESOLVED, that the San Francisco Port Commission authorizes and urges the Executive Director and any other appropriate officers, agents or employees of the City to take any and all steps (including without limitation, the execution and delivery of any and all certificates, agreements, notices, escrow instruction, closing instructions or other documents) as they or any of them deem necessary or appropriate, in consultation with the City Attorney, in order to consummate the transactions incorporated in the Second Amendment to and Restatement of Lease No. L-10421 in accordance with this resolution, or to otherwise effectuate the purpose and intent of this resolution, such determination to be conclusively evidenced by the execution and delivery by any such person or persons of any such documents.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of February 24, 2004.

_____
Secretary

EXHIBIT A



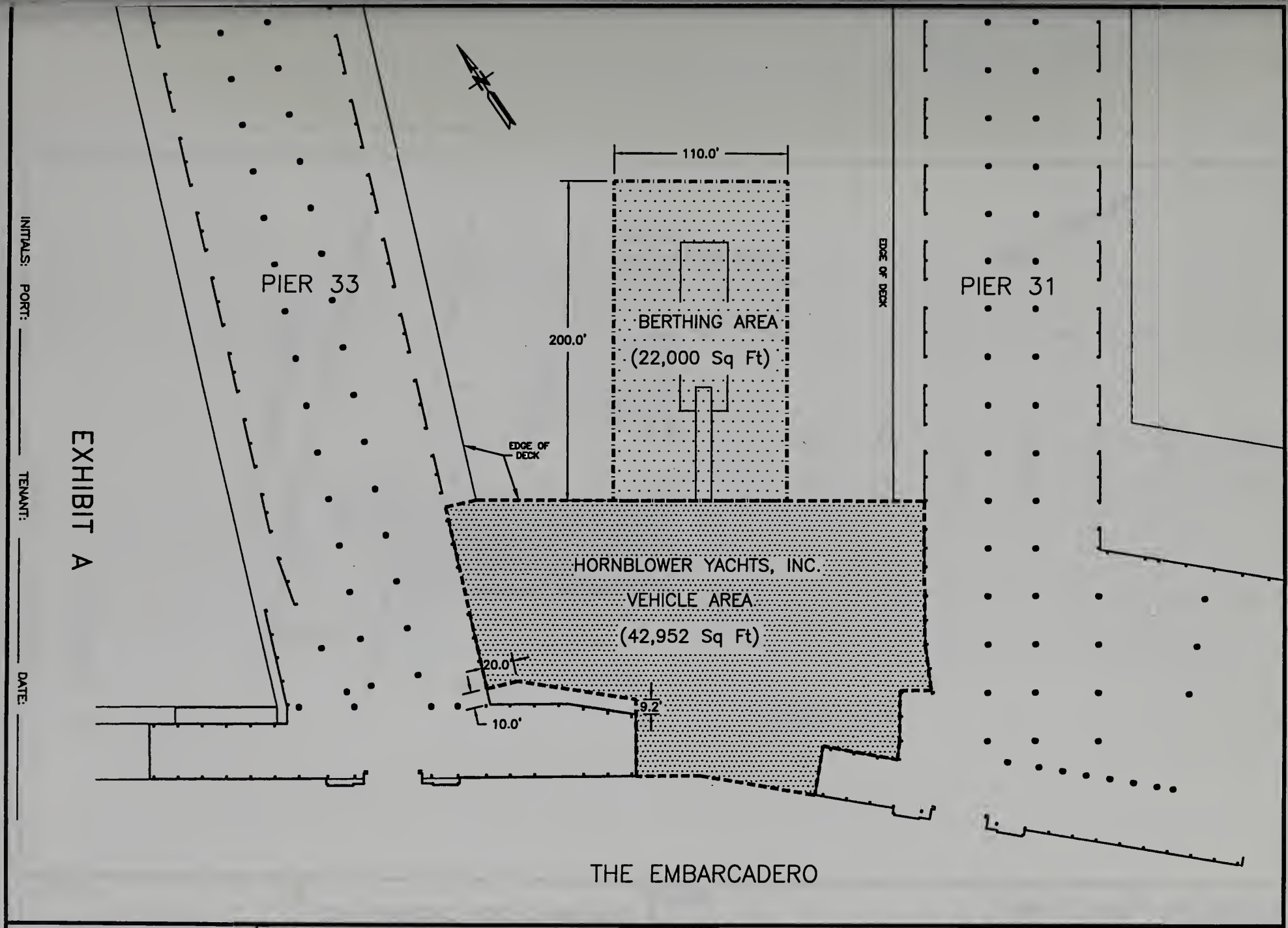
APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

_____
CHIEF HARBOR ENGINEER

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

PIER 3
SITE MAP
LEASE NO. L-10421
FERRYBOAT SANTA ROSA PARTNERS, LTD.

IN CHARGE: N. DEMPSEY	CHECKED BY: ---
DRAWN BY: AMN	DATE: 18 FEB 2004
DATA FILE: ---	SCALE: 1" = 80'
DRAWING NO. HB-SRLeaseBdy.dwg	SHEET NO. 1 OF 9 SHEETS



LEASE NO. L–	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO DEPARTMENT OF ENGINEERING	TENANT HORNBLOWER CRUISES & EVENTS	DRAWN BY: ECC CHECKED BY: N. DEMPSEY PLACE CODE NO. 1335–00	DATE: DEC 3, 2003 SCALE: 1" = 80' SHEET NO. OF SHEETS

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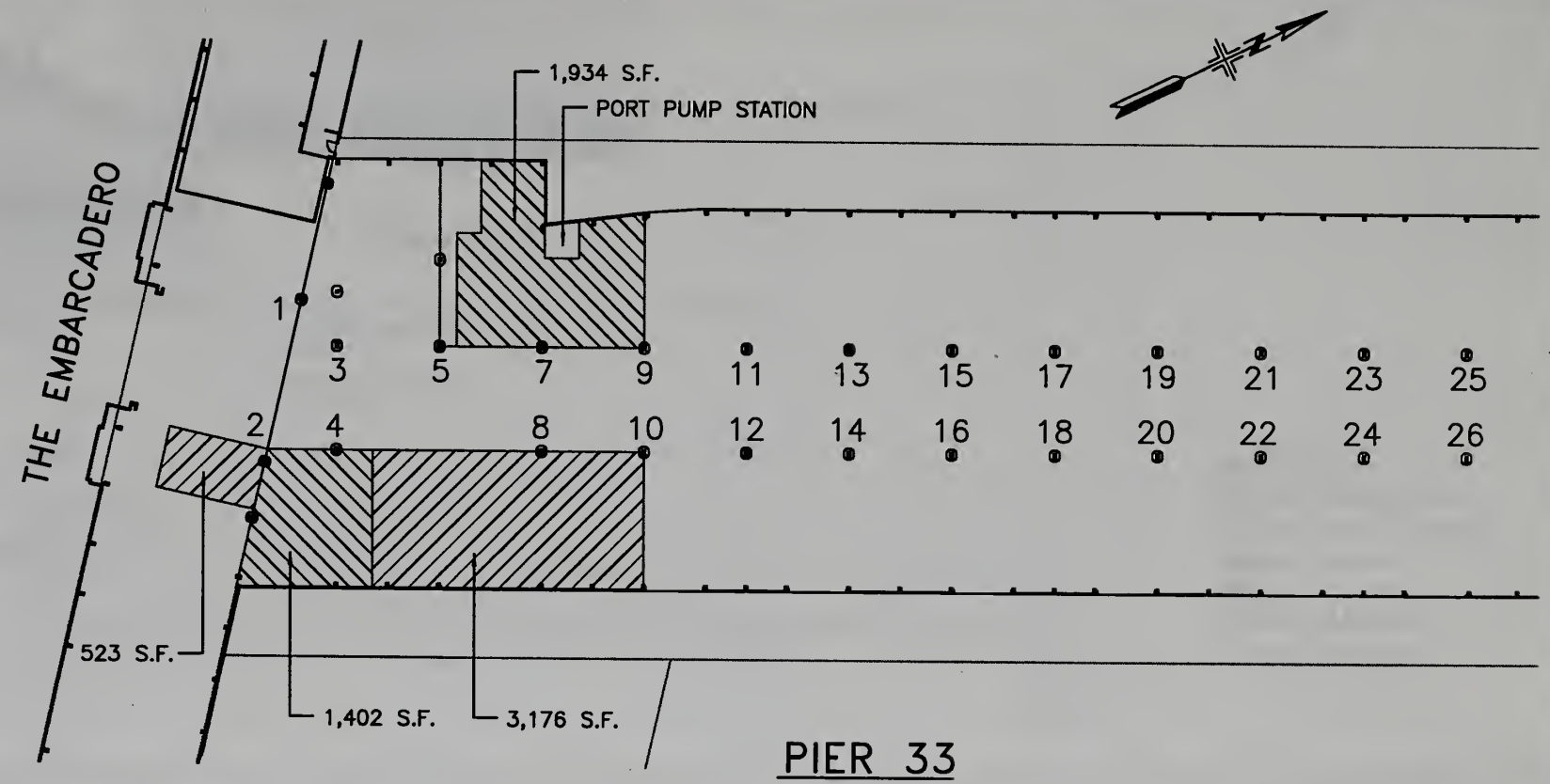


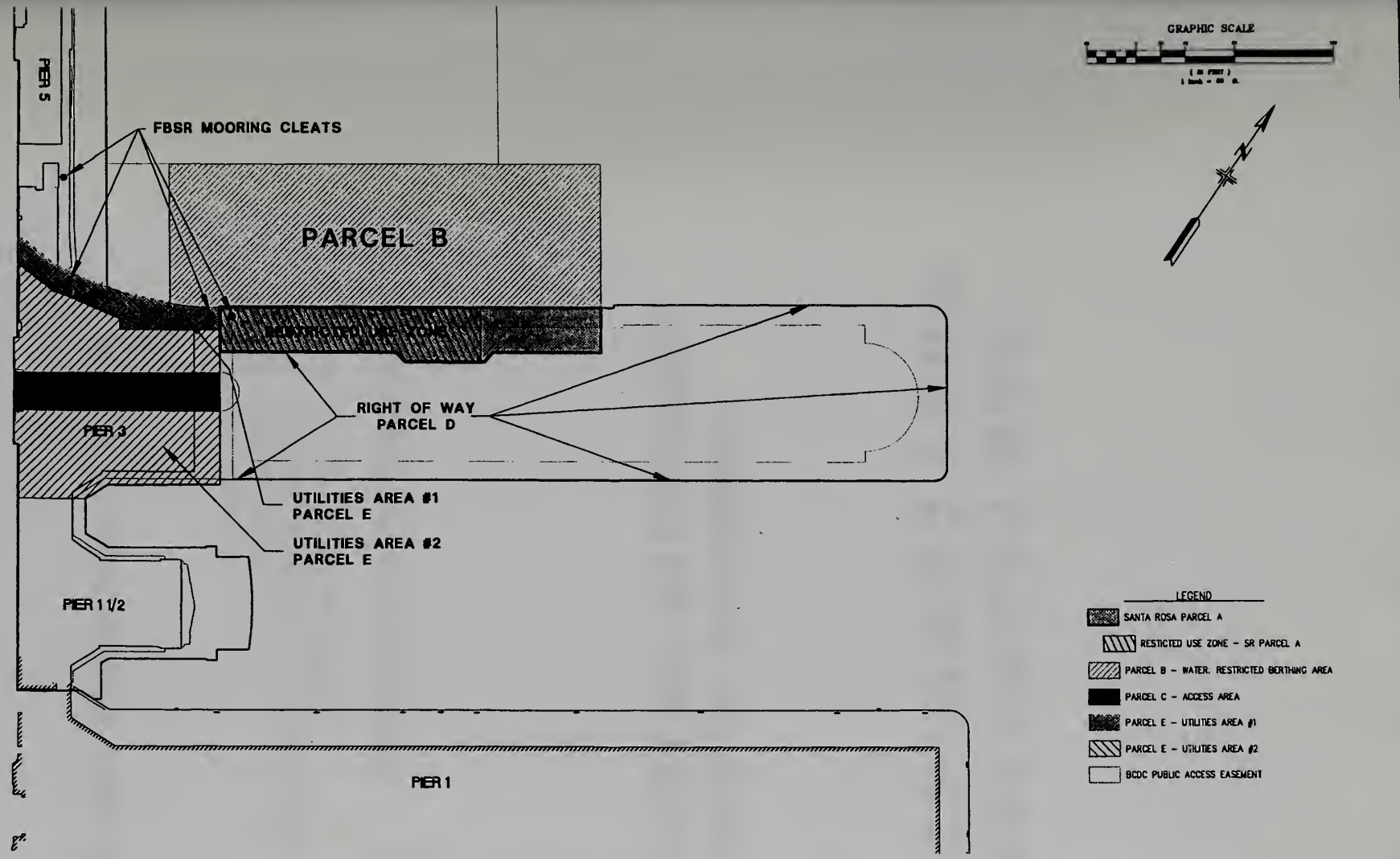
EXHIBIT A

INITIALS: PORT_____ TENANT_____ DATE_____

LEASE NO.		TENANT:		
L-12501	SAN FRANCISCO PORT COMMISSION PORT OF SAN FRANCISCO	HORNBLOWER CRUISES AND EVENTS	DRAWN BY: S. CHU CHECKED BY:	DATE: DEC. 3, 2003 SCALE:
			PLACE CODE NO. 1330-0-0000	SHEET NO. OF SHEETS

G:\Property Files\Lease Maps\EXHIBITS-PIERS\P33Hornblower1

EXHIBIT A



APPROVED BY
SAN FRANCISCO PORT COMMISSION
DATE _____

_____
CHIEF HARBOR ENGINEER

SAN FRANCISCO PORT COMMISSION
PORT OF SAN FRANCISCO
DEPARTMENT OF ENGINEERING

PIER 3
SITE MAP
LEASE NO. L-10421
FERRYBOAT SANTA ROSA PARTNERS, LTD.

IN CHARGE: N. DEMPSEY	CHECKED BY: ---
DRAWN BY: AMN	DATE: 18 FEB 2004
DATA FILE: ---	SCALE: 1" = 80'
DRAWING NO. HB-SRLeaseBdy.dwg	SHEET NO. 1 OF 9 SHEETS

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2/24/04

SAN FRANCISCO
PORT COMMISSION

FEBRUARY 24, 2004
MINUTES OF THE MEETING

DOCUMENTS DEPT.

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SAN FRANCISCO
PUBLIC LIBRARY

MEMBERS, PORT COMMISSION

HON. WILFRED HSU, PRESIDENT
HON. MICHAEL HARDEMAN, VICE PRESIDENT
HON. KIMBERLY BRANDON
HON. SUE BIERMAN

DOUGLAS F. WONG, EXECUTIVE DIRECTOR

CITY & COUNTY OF SAN FRANCISCO
PORT COMMISSION

MINUTES OF THE REGULAR MEETING
FEBRUARY 24, 2004

1. ROLL CALL

Commission President Wilfred Hsu called the meeting to order at 3:15 p.m. The following Commissioners were present: Wilfred Hsu, Michael Hardeman and Sue Bierman. Commissioner Kimberly Brandon was not present.

2. APPROVAL OF MINUTES - February 10, 2004 Meeting

ACTION: Commissioner Hardeman moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor; the minutes of the February 10, 2004 meeting were adopted.

3. EXECUTIVE

A. Executive Director's Report: Director of Real Estate Ken Winters, filling in for the Executive Director, reported that the Port will be participating in a Citywide public arts project during the spring of 2004 called Hearts in San Francisco. Originally based on the concept pioneered in Chicago by the "Cows on Parade" Project, the San Francisco version incorporates several innovative aspects to set a new standard for this type of public arts event. The intent is for Hearts in San Francisco to become a unique hybrid of fundraising, compassionate community involvement and a positive nurturing of artistic expression. Approximately 130 local and nationally recognized artists will participate in the project by transforming five-foot heart sculpture/templates into unique works of art. The Hearts will be displayed around the City – on sidewalks, plazas, businesses, parks and street corners and will have significant impact on tourism in San Francisco. Beneficiary of the Hearts project will be the San Francisco General Hospital Foundation. The Port is making available 10,000 square feet in Piers 27/29 (formerly Cape Henry) from March through November 2004 to be used as a storage area and as a place for the artists to paint and design their Hearts.

The Commission asked staff to investigate issues raised by employees and their representative at the last meeting. Port staff has reviewed the issues raised, and is ready and willing to meet with the individuals and /or their representatives. The issue is not calendared as an agenda item because under the Charter, the Commission does not have jurisdiction over individual personnel issues. When public comment is available, Port staff will respond and Port staff stands ready to work with the individuals and their representatives on this matter.

The Commission Secretary announced that the 2003 Combined Charities Campaign will be presented at the next meeting.

4. CONSENT

A. Request for approval of First Amendment to Lease No. L-13448 with the California Foundation on the Environment and the Economy. (Resolution No. 04-17)

B. Request for approval of a new Month-to-Month Lease with Operation USA, a California Non-Profit Corporation, Lease No. L-13611 (Resolution No. 04-18)

ACTION: Commissioner Hardeman moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor; Resolution Nos. 04-17 and 04-18 were adopted.

5. ENGINEERING & MAINTENANCE

A. Request for approval to execute a Contract Service Order with Parsons, Brinckerhoff, Quade and Douglas, Inc. to provide professional engineering services for Pier 35 Security Enhancement Project in the amount not to exceed $225,000. (Resolution No. 04-19)

Project Manager Mojgan Yousefkhan presented the item and requested Commission's approval. On July 16, 2003, the San Francisco Port Commission authorized the award of an "As-Needed Engineering and Environmental Services contract to Parsons, Brinckerhoff, Quade and Douglas, Inc. (PB) for professional engineering services at a cost not to exceed $1 million. In June 2003, the Transportation Security Administration (TSA) awarded a grant to the Port of San Francisco in the amount of $3,475,000, of which $3,150,000 is earmarked for security improvements to the cruise ship terminal at Pier 35. The preliminary concept design work for this project commenced last December. Since then, staff has been working with TSA in finalizing the scope of work. On February 10, 2004, TSA approved the scope of work. After careful evaluation of the project's scope of work and schedule, the Port Engineering staff determined that Port staff is unable to perform the required work due to a lack of specialized technical expertise in the required engineering field and lack of adequate resources to meet grant deadlines. Staff also contacted other City departments to seek assistance in completion of the work in a timely manner. However, none of the departments expressed interest in performing this work. Consequently, Port staff requested its existing consultant, PB, to assist the Port in completing the design work. Last December, Port issued the first Contract Service Order (CSO) to PB for $74,929.55 to initiate architectural and engineering services for the Pier 35 Security Enhancement Project. To achieve the project goals as efficiently as possible, staff seeks to issue a second CSO to PB for $225,000 to provide further architectural and engineering services for the Pier 35 Security Enhancements. These architectural and engineering services will be funded through the existing TSA grant. Ms. Yousefkhan requested the Commission to authorize the Chief Harbor Engineer to issue the second CSO with PB in the amount not to exceed $225,000 to provide professional engineering services for the Pier 35 Security Enhancements project.

ACTION: Commissioner Hardeman moved approval; Commissioner Bierman

seconded the motion. All of the Commissioners were in favor; Resolution No. 04-19 was adopted.

6. MARITIME

A. Request for approval of the Second Amendment to Lease No. L-12839 with Hanson Aggregates Mid- Pacific, Inc. at Seawall Lot 352. (Resolution No. 04-20)

Maritime Director Peter Dailey presented the item and requested Commission's approval. Hanson Aggregates Mid-Pacific operates a maritime sand reclamation and distribution and storage facility using a barge and conveyor system at SWL 352. Their current five-year lease expires on February 28, 2004. The lease includes 190,230 s.f. of unpaved land at SWL 352. Hanson and the Port have negotiated the following amendments to the lease:

- Term: The term of the agreement will be extended for five years commencing on March 1, 2004 and terminating on February 29, 2009. It will also include three five-year options to extend the term. Port retains the right to reject the options if any material event of default occurs during the term of the lease. Port can also reject the options if the mitigation measures have not been completed in a timely manner, as determined solely by the Port.

- Base Rent Revision: Wharfage has been added to the base rent section. In addition to the base rent of $38,225.81 per calendar month, tenant shall pay wharfage to the Port each month at the rate of $0.79 per metric ton of sand and/or aggregate discharged by or on behalf of the tenant at the facility. Tenant shall pay wharfage to the Port only to the extent that the amount by which the wharfage due for each lease year exceeds the base rent previously paid by tenant for said lease year.

  The Base Rent is subject to an annual CPI increase and the wharfage is subject to adjustment at the same percentage and at the same time as those increases authorized by the California Association of Port Authorities for the Port's Tariff No. 4. At each extension term, Base Rent will be readjusted to the greater of CPI or market rates as determined by the Port. If Tenant disagrees with Port's market rent determination, the matter will be submitted to arbitration as set forth in the second amendment.

- Local Trucking: The Local Trucking clause has been amended to reflect new language that requires the reporting of local trucking to be provided to the Port in terms of revenue instead of tonnage.

- Subsequent Mitigation Measures: Subsequent Mitigation Measures, as identified in the Southern Waterfront SEIR, have been added to the lease providing for stricter controls on air and water quality. Included in these measures is the program for dust abatement, which requires tenant to install a truck wheel-washing system as well as daily street sweeping on streets surrounding the facility.

- Infrastructure Improvements: The Tenant agrees to make a one time payment to the Port in the amount of $165,880.56, which Port shall allocate toward the construction of the Illinois Street Intermodal Bridge, the "Gateway Project" or other as yet-to-be defined projects.

This $165,880.56 payment in addition to what Hanson has already contributed to the infrastructure and improvement funds brings their participation in this fund to over $400,000 to the Port. Hanson is the Port's leading maritime tenant. Upon the Commission's approval of this amendment, they will become the Port's sixth largest tenant, generating about $1.5 million a year. They transport an estimated 1.2 million metric tons of bulk cargo across their docks. They are the leading cargo generator and maritime tenant at the Port.

Commissioner Hardeman remarked that it's good news that the Port has this lease.

ACTION: Commissioner Hardeman moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor; Resolution No. 04-20 was adopted.

7. REAL ESTATE

A. Approval of Second Amendment to and Restatement of Lease No. L-12175 with Hornblower Yachts, Inc. for Real Property and Exclusive Berthing Rights at Pier 3.

Approval of Second Amendment to and Restatement of Lease No. L-10421 with Ferryboat Santa Rosa Partners, Ltd. for Real Property and Exclusive Berthing Rights at Pier 3.

Approval of an Amendment to and Restatement of Lease No. L-12501 with Hornblower Yachts, Inc. for Real Property and Exclusive Berthing Rights at Piers 31-½ and 33 (Resolution 04-16).

Asset Manager Nic Dempsey indicated that in March 2003, the Port Commission approved a Lease Disposition and Development Agreement ("LDDA") and Lease ("Piers Project Lease") with San Francisco Waterfront Development Partners ("SFWDP") for the historic renovation and redevelopment of the Piers 1½, 3 and 5 bulkhead buildings.

As a condition to the developer's obligation to lease and rehabilitate the Piers 1½, 3 and 5 bulkhead buildings, the LDDA requires the Port to make certain modifications to the existing lease hold rights of Hornblower Yachts, Inc. and the Ferryboat Santa Rosa Partners, Ltd. at Pier 3. The required modifications include:

1. The reservation of 25 Parking Spaces for the exclusive use by SFWDP.
2. The restriction on development of approximately 20,575 square feet of the Pier 3 surface area now controlled by Hornblower and Ferryboat Santa Rosa leases.

3. The relocation of Hornblower's ticket office/visitor center from the Pier 3 North Bulkhead to the Pier 3 Bulkhead.
4. The adjustment of Hornblower's and Ferryboat Santa Rosa's lease lines including the reduction of a portion of Hornblower's and Ferryboat Santa Rosa's exclusive berthing area to accommodate SFWDP's public access improvements.
5. The granting of an access right in favor of SFWDP across a portion of Pier 3 for construction staging and laydown.
6. Limitations on Hornblower's and Ferryboat Santa Rosa's use of its rights to ingress and egress through the Pier 3 Bulkhead.
7. The sharing of SFWDP's maintenance costs attributable to the access way through Pier 3.
8. The temporary placement of a construction barge in Hornblower's exclusive berthing area.

During the last year, Port real estate staff in coordination with the Port Planning staff has negotiated with Hornblower Yachts, Inc. and the Ferryboat Santa Rosa Partners Ltd. for these concessions. In return for which, Hornblower has asked the following concessions from the Port:

1. A reduction in base rent reflecting the reduction in the size of Hornblower's exclusive berthing area or premises.
2. The creation of a non-exclusive utility area in favor of Hornblower beneath Pier 3 to the Embarcadero to service both the Hornblower and the Ferryboat Santa Rosa.
3. A right for Hornblower to place its signage on the Pier 3 archway façade.
4. A right for Hornblower to use the flagpole atop the Pier 3 archway.
5. The automatic expansion of the Hornblower premises to incorporate the pier and water area now controlled by the lease with the Ferryboat Santa Rosa Partners, Ltd. (Lease No. L-10421) to be effective upon the termination of that lease.
6. An extension of performance dates relative to the preparation of a repair plan for the Pier 3 substructure as now required by the existing lease.
7. The relocation or restoration of all Hornblower utilities required for the historic renovation and redevelopment of Piers 1½, 3 and 5 at no cost to Hornblower.
8. An option to extend the term of the lease following Hornblower's completion of the substructure repairs.
9. An acceleration of Hornblower's existing rent credit reimbursements and the inclusion of other Hornblower percentage rent obligations in calculating that reimbursement.
10. A single additional rent credit for the relocation of Hornblower's electrical transformer required as a condition of its BCDC permit.
11. A single additional rent credit to Ferryboat Santa Rosa Ltd. Partners for the installation of an ADA compliant access ramp for the Pier 3 dock to the Ferryboat Santa Rosa main deck.
12. A right to terminate the lease if, in Hornblower's reasonable opinion, future rent credits will not, over the remaining lease term, effect a total reimbursement of Hornblower's cost of substructure repairs.

Port staff has negotiated the proposed second amendment to and Restatement of Lease

No. L-12175 and Lease No. L-10421 which accommodate those requests by Hornblower and the Ferryboat Santa Rosa. In addition and in order to allow for Hornblower's continued operation during the repair of the pier substructure and during the rehabilitation of Piers 1-½, 3 and 5, staff has negotiated a first amendment to and restatement of Hornblower's existing lease at Pier 31-½, allowing them to continue their operations and have provided that the sales of that facility will be incorporated into the sales at Pier 3 for purposes of percentage rent determination and for offset against percentage rent of those rent credits previously granted by the Port Commission to Hornblower. Hornblower has also asked that in approving these leases, the Port Commission make a finding that these amendments are being entered into for the purpose of effecting public projects namely the rehabilitation of Piers 1-½, 3 and 5 and potentially and eventually the possible renovation and redevelopment of Piers 27-31. The Hornblower's reason for asking for this finding is its provision and support by the City Attorney that the City Purchasing officer has the right to waive the application of the Health Benefits Ordinance on those amendments that are made for the specific purpose of effecting public projects. Port staff believes that all three proposed amendments are in the best interest of the City and the Port. Hornblower Yachts and the Ferryboat Santa Rosa Partners, Ltd. have been most cooperative and generous in accommodating the Port's needs regarding these two projects. Mr. Dempsey thanked Terry McCrae, President of Hornblower Yachts for his cooperation; and more specifically, the unending efforts by Joe Wyman, manager of development. He also thanked the Port's engineering staff for preparing the exhibits and the Port's Planning's staff for their thorough cooperation and investigation of the documents to ensure that they do not conflict with the rights and the hope for the historic rehabilitation of Piers 1-½, 3 and 5.

ACTION: Commissioner Hardeman moved approval; Commissioner Bierman seconded the motion.

Commissioner Bierman asked about the healthcare ordinance. Mr. Dempsey replied that the Port is required and has inserted in this lease the requirement that all tenants under the lease comply with the San Francisco Healthcare Benefits Ordinance. There is a provision in the code that allows for the City Purchaser to waive the applicability of that ordinance to the extent that it is the decision and the finding of the City Purchaser that the lease was entered into to effect the public project. The finding was made at the request of the tenant.

Commissioner Bierman asked if the employees will be losing their healthcare. Mr. Dempsey confirmed that no one is losing healthcare. Under the ordinance, tenants have to comply with the Health Care Ordinance (HCO). Hornblower is agreeing to comply with the ordinance. However, there is a provision in the HCO that states they would not have to comply with the ordinance for leases of this type. If the City Purchaser agrees with them, they would not be required to provide the healthcare as required by the ordinance as opposed to the healthcare that they might provide otherwise in their system. Whether or not this finding is made, the City Purchaser may make the determination that the ordinance does not apply to their employees. The Commission could eliminate the finding in the resolution. It will not eliminate the

effectiveness of the ordinance.

Commissioner Hsu asked why this was item not discussed in executive session. Mr. Dempsey offered that this item was discussed in executive session on three occasions - twice with the previous Commission and once with the new Commission.

Commissioner Hsu indicated that in light of Commissioner Bierman's and his concerns, he suggested that this item be tabled to the next meeting after the Commission has had a chance to discuss the issues.

Mr. Dempsey replied that these matters are conditions of the close of escrow for the Piers 1-½, 3 and 5 project.

Director of Planning and Development Byron Rhett indicated that in relation to the Piers 1-½, 3 and 5 project, these amendments are necessary to be able to close escrow on that particular development and start the rehabilitation of the piers. The close of escrow is scheduled to happen before the next Commission meeting. It would delay that closure if the Commission does not take the action today.

Commissioner Hsu asked when the close of escrow is scheduled. Mr. Rhett replied that it is scheduled for March 3rd.

Mr. Dempsey indicated that if this item will be discussed in closed session, it will take two meetings. Commissioner Hsu replied that this item does not have to be discussed in closed meeting; it can be discussed in staff meetings.

Commissioner Bierman was concerned about a statement on the staff report with regard to the City Attorney not issuing an opinion as to the validity of Hornblower's position.

Mr. Dempsey replied that after the staff report was drafted and printed that the Deputy City Attorney informed him he agreed with Hornblower's interpretation. The code provides for a waiver by the City Purchaser, not by the Port Commission.

Commissioner Bierman indicated that the fact that the statement states that the City Attorney has not issued an opinion as to the validity of Hornblower's position triggers that there is a problem.

Deputy City Attorney Neil Sekhri clarified that when this lease was entered into, the City has not adopted the Health Care Ordinance (HCO). It was adopted after the lease was originally entered into. As of the existing date, Hornblower is not required to comply with the terms of the ordinance that requires certain levels of healthcare to be provided to employees. It also asks for a waiver to be given by the Purchaser's office in certain instances. There is a provision in the ordinance that deals with the amendments desired by the City. There is a finding in the resolution which states that it is necessary for the Port and Hornblower to enter into the proposed amendments in order to effect two public projects, namely, the historic renovation and redevelopment

of Piers 1½, 3 and 5 and the renovation and redevelopment of Piers 27, 29 and 31. Therefore the purchaser could review that finding and make a determination that this amendment is being done for the public benefit and for the convenience and the necessity of the agency. The Purchaser would be looking at this finding or to support a finding that this project is exempt. If the finding was not included in the resolution, the Port would still need to make that argument that it was required to promote the Pier 1-½, 3 and 5 project.

Commissioner Hardeman indicated that the work that is going to be accomplished falls under prevailing wage and the employees will have the best of healthcare. Mr. Sekhri noted that it's not for Hornblower employees but for the construction of the substructure. The ordinance applies to Hornblower employees.

Commissioner Hardeman asked if there would be new employees that would be affected by this statement. Mr. Sekhri replied that to the extent that this amendment triggers the healthcare ordinance and Hornblower is required to comply with it, their new employees would be able to benefit from the requirements of the ordinance.

Commissioner Bierman indicated that it seems like Hornblower are not required to pay attention to the HCO. Mr. Sekhri replied that they are required unless the Purchaser waives the requirement. Hornblower would have to appeal to the Purchaser and state that they only entered into this amendment because it's for the benefit of the City. The City requested them to enter into this amendment; therefore they would get the benefit of this waiver. The Purchaser would look at it and decide whether that is the case. The finding in the resolution as it stands right now would support the Purchaser's ability to make that waiver.

Commissioner Bierman indicated that since the Commission has to vote on this item, they are essentially voting that they accept the fact that Hornblower evidently does not care much about the ordinance and the people who would need the healthcare.

Terry McCrae, President of Hornblower, indicated that Hornblower has been a Port tenant since 1983. The lease before the Commission is an amendment that the Port has asked them to enter into to help the public project at Piers 1-½, 3 and 5. They provide healthcare to their approximately 200 employees in the bay area. They have a wide range of healthcare options such as PPO, HMO, dental care, and vision. They have a threshold for participating and have some other technical parts of the healthcare program that do not exactly pair up with the City's Healthcare Ordinance which was passed in the last 12 months. Their lease at Pier 3 commenced 4-5 years ago. The economics of that lease and their business were designed for their healthcare plan. They have not received any complaints from their employees regarding their healthcare. They have provided it continuously since becoming a tenant of the Port and they expect to provide it continuously. The issue is with respect to the technical amendments and the technical parts of their plan and how they conform. During their negotiations with the Port, they chose to accomplish their objectives on the lease to address differences in healthcare by simply saying that the ordinance does not have to apply because they already provide healthcare to their employees. Otherwise, it would

open up a whole can of worms of this healthcare vs. this healthcare and create a lot of issues in the negotiation of the lease that they were not necessarily interested in and didn't have time to address in the time frame that the Port has. Their request was simply to say that the newly passed healthcare ordinance doesn't necessarily apply. It wouldn't apply. They made no amendments to the lease at all. They entered into the amendments with the Port to help move the project forward. They are not looking for any associated economic penalty. It was the most expedient way to continue to move forward. It's not an attempt not to provide healthcare because they are providing it.

Commissioner Bierman asked what part of the ordinance does Hornblower's healthcare not fit into. Mr. McCrae replied that he couldn't debate an answer to the technical question. For example, their healthcare triggers a different threshold that the City's ordinance triggers at a lower threshold. Hornblower has highly seasonal employment. The way they measure and the way the City measures the participation threshold are slightly different. The plans change overtime too. It's a dynamic thing. There are differences in who can participate but they are not significant. They decided to deal with it this way instead of spend a lot of time reinventing their healthcare plan. It was acceptable to the Port and the City Attorney during their negotiations.

Noreen Ambrose, City Attorney, indicated that when the Board of Supervisors adopted the HCO and made it applicable when leases were amended, they specifically contemplated this situation where the Port is the party that is seeking the amendment. Hornblower didn't invite this lease amendment. The Board, in constructing the ordinance, wanted to allow the Port's negotiating position to convince Hornblower to subject itself to an amendment of the lease where it's giving certain of its property over to the Pier 1-½, 3, and 5 project. The proposal before the Commission is not inconsistent with the HCO.

Commissioner Bierman was concerned that all new leases or amendments to existing leases include the HCO requirements. It is not reassuring when she reads that the City Attorney has not issued an opinion as to the validity of Hornblower's position. The Commission cannot go along with Hornblower not having good health coverage for its employees.

Mr. Dempsey indicated that the reference to the City Attorney is not the City Attorney's office but it refers to the Port's City Attorney. At the time the report was drafted and typed, staff has not received the Port City Attorney's opinion. Keep in mind that Hornblower has absolutely no obligation to make any concessions that San Francisco Waterfront Partners are requesting. The Port asked Hornblower to give up a lot of territory, to give a lot of development rights, and to give the right to 25 of their own parking spaces that they had destined for their own customers. In order to accomplish that, the Port and Hornblower needed to amend the lease. City Attorney Ambrose and Deputy City Attorney Sekhri have indicated that the ordinance, as crafted by the Board of Supervisors, provides that in those circumstances where the tenant is not seeking the amendment, the City Purchaser may make a determination of a waiver. This is not in contravention of the ordinance nor it is in contravention of the intention of the Board of Supervisors when it passed the ordinance.

Commissioner Hardeman moved approval to strike the words that Commissioner Bierman described. Commissioner Hardeman asked for the City Attorney's opinion if those words could be stricken on the resolution.

Ms. Ambrose deferred the question to Mr. Sekhri. She opined that the underlying point is that whether the Port Commission makes the finding or not, the ordinance remain the same and that it is clear that the Port is seeking the amendment and it will be up to the Purchaser's office to make that determination and issue the waiver.

Deputy City Attorney Neil Sekhri indicated that the resolved clause that Commissioner Hardeman was referring to was on Pages 3 and 4 of the resolution.

Commissioner Bierman asked how many employees Hornblower employs. Mr. Dempsey replied that they have approximately 200 seasonal employees. They employ more during the summer because of the tourist business. They provide healthcare benefits for their employees.

Commissioner Bierman asked if Hornblower provides healthcare to their employees now and if the situation would remain the same after today. Mr. Dempsey replied affirmatively. Commissioner Bierman asked what's changing.

Deputy City Attorney Neil Sekhri replied that the Port is seeking approval to the amendments to the lease. The HCO was passed a year ago, which states that new amendments will trigger this ordinance unless it's being done for a public project. These amendments could potentially trigger the healthcare ordinance if they don't fall within this waiver. If the amendment wasn't done, Hornblower will continue providing the same healthcare coverage they are providing now and would be doing so for the next 20 years. The only thing that is changing is that the amendment to the lease could potentially trigger this new ordinance. The ordinance itself provides a waiver when the City, not the tenant, initiates the amendment.

Commissioner Bierman indicated that by approving this amendment, the Port is essentially agreeing to Hornblower not providing healthcare. Mr. Sekhri replied that was not the intent of the Port. The Port Commission, as a condition to doing Piers ½, 3 and 5, would request Hornblower to enter into an amendment that is necessary in order to affect the public project, the historic renovations of Piers ½, 3, and 5. The Port asked Hornblower to enter into this amendment. Hornblower was happy to enter into the amendment but was concerned about the new ordinance that have gone into affect since they have originally entered into their lease. Hornblower was willing to accommodate the Port's request and enter into the new amendment but they wanted the Port to make a finding that would allow them to be exempt from the City's healthcare ordinance.

Commissioner Bierman commented that she was too uncomfortable to go along with the Port's request.

Mr. Sekhri stated that the alternative would be that Hornblower wouldn't do the

amendment, which means they don't have to go along with the HCO requirements for the next 20 years. It's only because the amendment is being requested that the issue came up.

Commissioner Bierman remarked that it's not nice to bargain on people's healthcare because the Port needs something. Ms. Ambrose pointed out that the HCO will apply to the Piers 1-½, 3 and 5 project as a new lease. All the businesses in that building will be subject to the HCO.

Commissioner Bierman asked what that has to do with this particular problem. Ms. Ambrose replied that the Port couldn't do that project until Hornblower amends its lease.

Commissioner Bierman commented we can't do what we want to do unless we give away people's healthcare. Ms. Ambrose replied that the lease does not give away people's healthcare. The Board, in enacting the HCO, only made it applicable to leases that were being amended if it was the tenant's idea to amend the lease. In this case, it is the City's idea to go to the tenant to amend their lease. The tenant pointed out that they are not giving away people's healthcare. They're asking that their amended lease not be subject to the HCO's view of what their healthcare program should be.

Commissioner Bierman indicated that Hornblower is getting out from under what the Board thinks. Ms. Ambrose replied that the finding in the resolution states that the City is seeking an amendment to the lease in order to accomplish a public project. It is Hornblower's position that the ordinance provides for a waiver of applicability when the amendment to the lease is required to effect a public project. Hornblower is asking the Port Commission to acknowledge that the reason this lease is being amended is in order to accommodate the public project. Hornblower will have to go to the Purchaser and be evaluated under the HCO to determine if they qualify for the waiver that the Board provided for. The motion on the floor that Commissioner Hardeman suggested was that if the Commission does not feel comfortable being part of that finding, the three clauses that relates to that finding could be deleted in the resolution. The Purchaser under the HCO will still have to make a determination on this question without the benefit of a Port Commission finding.

Commissioner Bierman indicated that she's can't vote on something that jeopardizes people's healthcare even if it helps the Port. Ms. Ambrose replied that she does not believe that it jeopardizes people's healthcare.

In light of Commissioner Bierman's concerns, Commissioner Hsu suggested tabling this item to give the Commission an opportunity to discuss the matter further with staff and vote on it at the next meeting.

Frank Martin Del Campo, SEIU 790, applauded the inquiries and the concerns that are obviously evident on the part of the Port Commission. It reflects well on the Commission, individually and collectively. It was his understanding from the presentation by the Hornblower president that the City's HCO has a different

threshold; it's a lower threshold. He presumed that it would be a lower threshold for coverage or benefits. He does not know that to be the case. It's pertinent to find out what the different thresholds are for their existing employees. Do they have something that's not up to the bare minimum of healthcare? That would be an appropriate inquiry to look into. He thanked the Commission for looking into this. The Port is very good for business. Labor has to be looked at too and they will be addressing that issue under public comments. He thanked the Commission for the inquiry and they look forward to assisting the Port with any information they can find out on this important measure.

After further discussion, Commissioner Hsu indicated that this item will be continued to the next meeting.

Commissioner Bierman asked Ms. Ambrose to look into this matter and help the Commission in its deliberations.

8. NEW BUSINESS/PUBLIC COMMENT

Francisco Da Costa, Environmental Justice Advocacy, reminded the Commissioners about the public comment period after every item. When the Hanson's item was discussed, the Commission did not ask for public comment. Even though there was no speaker card filled, the Commission should have asked for public comment. Technically, that item could be brought back. He appreciates Commissioner Bierman's asking a pertinent question. In the past, he brought to the Commission's attention a couple of issues that no one listened to but he won big time: (1) The toxic piles on Pier 92. The piles were full of the worst types of toxic and the Commissioners did not want to do anything about it. He took the issue to the State level. The Port Commission spent over $900,000 to remove the toxic piles. He single-handedly won that case. (2) Living classroom at Pier 98. It is his understanding that the living classroom close to the Hunter's Point Power Plant will not be built. If it is built, their children will be taken to a toxic dump and bombarded by electromagnetic field from the nearby Hunter's Point Power Plant. He requested the Commissioners to bring it back to the public and advise the public that the living classroom will not be built at Pier 98. He reminded the Commission that this 7- ½ mile territory is public trust land and it belongs to the people. There needs to be deliberations on at least a few items. Many of the deliberations are done in closed doors. The Commission is used to saying yes and no without deliberations. He commended Commissioner Bierman for asking pertinent questions.

Stan Loftus, SEIU 790, indicated that under Port Director Doug Wong's leadership, San Francisco has enjoyed a renaissance on the waterfront in which people from around the world have come to marvel . It's a picturesque vibrant area that was and is maintained largely due to the hard work of the many Civil Servants that are employed at the Port. It burdens him to no end as SEIU's 790 representative at the Port casts shadow on this beautiful area that Mr. Wong has created. He warned the Port Commission that a rising tide in the storm is brewing at the same time. 790 union members are not Nike shoe factory workers. Yet, their rights at the Port have been systematically eroded. Under the guise of management rights clause of their collective bargaining agreement which in brief states… "The City shall exercise control and discretion over the City's organization and operation's

manipulative patterns which have been and are occurring..." Thugs have been brought into the management realm to create an intimidating presence. All that occurred is detriment to the Port. As an example, a valuable union member and a critical Port employee resigned from the Port rather than face the constant ridicule of an inferior management thug who knew less of the work required in that particular department. Since then, that employee has received two promotions in another department. Management positions are created and then assigned as supervising role to justify their existence and yet they don't have any knowledge of what they're in charge of. No 790 union member is allowed to advance to a supervisory level even though these positions exist and union members are the best qualified. Yet, title enhancements and monetary gain occur on the back of 790 members for non-SEIU Port employees. SEIU says enough is enough. They say no to being the backbone of the Port's renaissance yet denied what its members have earned. SEIU will no longer sit quietly and allow its members to be treated in an abusive manner through thug management practices. No longer will SEIU Local 790 sit silently and allow Civil Service qualifications held by its members to be downgraded at the same time watch non-790 Port employees receive title enhancements and generous monetary gain that allows absorption of contract take back the City is asking during this financial crisis. No longer will SEIU 790 sit quietly and allow its members to be placed under management whose positions were created and yet these managers have no knowledge of what they supervise. SEIU will not allow the degradation of the Port to occur simply because of lack of check and balances at the management level. It's because of this lack of check and balance that the great work of Mr. Wong is in jeopardy. They, as SEIU 790, demand a return to fair labor practices and request and investigation as to whether fair labor laws have been violated. They look forward to assisting the Port Commission in restoring the sanity of the Civil Service process so that private sector individuals can continue to enjoy this world class area.

Andrew Bozeman, Bayview Hunter's Point and Executive Director of the Southeast Sector Community Development Corporation, commended the Commission for the clauses added to the leases of the aggregate and concrete companies in the Bayview Hunter's Point which requires them to wash their wheels and their trucks before they leave their premises and head down towards Third Street. However, the dust problem is not really resolved because the trucks enter onto Amador Street which has a very poor pavement and has a lot of cracks on the road which results in a lot of dust rising up from that street. By the time, these clean washed trucks with nice clean wheels get a hundred yards down the road, it's all over. They are again dusty and they build up clouds of dust that run down into third Street at the intersection of Cargo, Third and Amador. A huge dust cloud exists and bothers the businesses and residents in the area. They have complained about it for more than two years and while there have been promises that the road will be paved, nothing has happened. It continues to be included in the leases of the leaseholders at that area. They wash their wheels and trucks but without the Port's cooperation, the requirements being put on the tenants are not productive. He asked that something be done in terms of getting the Amador road paved so they can stop suffering from the dust. When dust enters the lungs, it is dangerous and deadly.

Commissioner Bierman asked Port staff to send someone to look at that situation. Ms. Ambrose indicated that during public comment, the Commission could direct Port staff to follow up on a particular issue. Staff can report back on this situation. Commissioner

Bierman asked Port staff to check into this matter and report back to the Commission. If the road is bad, the Port could have DPW look into it.

Senaite Shifferaw, SEIU 790, indicated that 790 members are back to hear from the Commission after their presentation a couple weeks ago about the different discrimination and processes that have undergone through the Port management. Today, through the acting executive director, they are hearing that the Commission has no say-so to what they are going through as members of 790. For the last five years, as an employee of the Port, they have gone through the different stages and different processes of grievance filing through the Port management. They have not had a positive reaction from them. It is after watching the rules of the Civil Service as well as their MOU being bent out of shape as people are favored, outside employees that are somehow related to the management body find their way through the backdoors of the Port to take positions and their grievances never got anywhere. They decided to come in front of the Commission to state what they are going through. The City Attorney's office of the Port informs the Commission that they don't have any right to look over this issue. The Commission has the right. When a Port management is non-responsive to their MOU and Civil Service rules, not only do they bend it but they go around breaking it, not only does the Commission has responsibility but has the right to correct it. If they don't find the answer from the Port Commission, they will take their cause to the bodies that are elected, to the Board of Supervisors and to the Mayor. The Port management cannot resolve this. They are sleeping on their wheels, they are absent from their positions. The Commission has a responsibility to look into it. Port management have taken off to treat everybody equally. Not only do the bend the law, they broke the law. In her case, they have presented fraudulent documents after she was laid off. They did this because she was an active member of SEIU 790. She was the shop steward of the Port's 790 members and have brought a lot of grievances against the Port. Through their action, they probably think they might silence her but not. They have laid her off while she was disabled. Six weeks after she was struck by a car, they asked her to come and collect her belongings in three days, telling her that she's been bumped off by a politically connected individual. She's not going to stop here. The Commission has the responsibility to look into their grievances and has the responsibility to correct the problem. Management cannot detach the Commission by telling them that they don't have any right over personnel matters. The Commission has the right. She requested for the Commission's response to the request they made last week.

Frank Martin Del Campo, SEIU 790, indicated that he and other 790 members present were set back by the developments today. In particular to the Port management and the Port Commission, the arrogance that has been demonstrated with respect to the answer they have been provided. They heard two things from the Executive Director's report: (1) They want to have a heart and put it throughout San Francisco. The 790 members think that the Port needs to put the heart back in the Port of San Francisco. It does not help to do it everywhere else. (2) The Port Commission does not have jurisdiction over this matter. He challenged those issues directly and asked the Commission to continue their good efforts to look into these matters. Is it not a public policy on the issues around Civil Service employment before when employment was corrupt? They brought in a new politician and brought in all their friends. There was a public policy about what kind of employment would happen in the public sector. That policy was around Civil Service employment, fair

testing and to ensure that we have the highest quality employees and were not circumvent for whichever politician might be in office. This sets the policy around the nature of injured workers. This is not a contractual issue. This is also a public policy issue. The issue is discrimination in employment. Discrimination is a public policy and we shouldn't be having these questions. The issues of labor laws are public policies because at one time on this Port, things were settled with management thugs. Union members were trying to find a better life, they developed labor laws to make sure they have a reasonable way of resolving and understanding differences. What is offered here today is that the Port Commission does have any jurisdiction over this matter. If he understood the answer to Commissioner Bierman's inquiry as to whether or not in public comment, the Commission can ask to have a report made, the answer he heard was clearly and unequivocally yes. The Commission can indeed ask for a report to be made. That was his understanding of what the Commission asked for at the last meeting. Today, Port management is telling the Commission that it's none of their business. The 790 members are challenging that response because it is the Commission's business. The members have the right to raise these issues before the Commission. He asked the Commission to pursue the legal advice that has been rendered today that the Commission has a right to ask for the report and make those inquiries. The issues that were raised by their members go to the very heart of fair employment practices. He asked the Commission to continue their efforts to look into it. They will not be stopped. They are frankly fed up. They can't take it anymore and they won't take it anymore. There was no reason for them to take it before. They would rather have a resolution to these differences. Port management is trying to ensure that the Port's labor policy never reach the ears and eyes of the public and they will not agree to that. They have the right to come to the Commission and they will keep coming back. He asked the Commission to continue their efforts to ensure the fair employment practices at the Port and he thanked the Commission for their demonstrated interest. They are sorry that Port management has not delivered on what they should be doing in accord with the Commission's wishes and the interest of the public. He hopes that the Commission pursues the report.

9. EXECUTIVE SESSION

A. Vote on whether to hold closed session to confer with Legal Counsel and Real Property Negotiator.

ACTION: Commissioner Hardeman moved approval; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

At 4:30 p.m., the Commission withdrew to executive session to discuss the following:

B. CLOSED SESSION

(1) CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION MATTER (Discussion Item)

a. Discuss existing litigation matter pursuant to Section (a) of California Government Code Section 54956.9 and San Francisco Administrative

Code Section 67.10(d) (1 case):

- F. Alioto Company, Inc. et al. v. City & County of San Francisco, et al., Superior Court Petition CPF 03-503016. (Discussion Item)

(2) CONFERENCE WITH REAL PROPERTY NEGOTIATOR – This is specifically authorized under California Government Code Section 54956.8.
This session is closed to any non-City/Port representative. *

a. Property: Seawall Lot 3030
Person Negotiating: Port: Peter Dailey, Maritime Director
*GP Resources: Andrew Zar

b. Property: Pier 80
Person Negotiating: Port: Peter Dailey, Director of Maritime
*Marine Terminals Corporation (MTC): Ken Passe

c. Property: Piers 27-31
Person Negotiating: Port: Byron Rhett, Director of Planning & Development
*Piers 27-31 LLC: Steve Jacobsen

d. Property: Pier 70
Person Negotiating: Port: Byron Rhett, Planning & Development Director
*Prospective Bidder(s)

10. RECONVENE IN OPEN SESSION

At 5:55 p.m., the Commission withdrew from executive session and reconvened in open session.

ACTION: Commissioner Hardeman moved approval to adjourn executive session and reconvene in open session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

ACTION: Commissioner Hardeman moved approval to not disclose any information discussed in executive session; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

11. ADJOURNMENT

ACTION: Commissioner Hardeman moved approval to adjourn the meeting; Commissioner Bierman seconded the motion. All of the Commissioners were in favor.

The meeting was adjourned at 5:56 p.m.

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